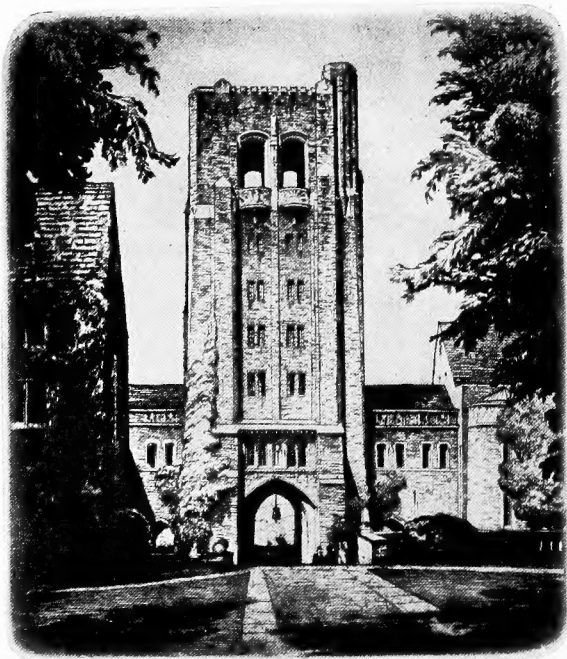






Cornell Law School Library

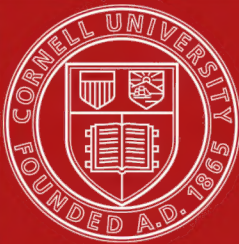
Cornell University Library
KD 1825.M36 1919

A treatise on the law of collisions at s



3 1924 022 403 970

law



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

MARSDEN'S
COLLISIONS AT SEA.

SEVENTH EDITION.

A TREATISE ON
THE LAW OF
COLLISIONS AT SEA.

BY
R. G. MARSDEN,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SEVENTH EDITION

BY
MARCUS W. SLADE,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

*“Si navis tua impacta in meam scapham damnum mihi dederit quæsitum est
quæ actio mihi competeret.”—Dig. lib. ix., tit. ii., fr. 29, § 2.*

LONDON:
STEVENS AND SONS, LIMITED,
119 & 120, CHANCERY LANE.

Law Publishers.

1919.

PREFACE

TO THE SEVENTH EDITION.



SINCE the last edition of this work was published the Maritime Conventions Act, 1911, and sections 1 to 7, the Pilotage Act, 1913, have come into force and made far-reaching alterations in the law. These alterations have been dealt with in the text, and in addition several chapters have been rearranged and in part re-written. The book has been brought up to date by the inclusion of recent cases, and the dates of the English, Scotch and Irish cases cited have been inserted. The appendices have been enlarged, and to facilitate reference sidenotes have been added to the local rules and a new Index prepared.

M. W. S.

3, TEMPLE GARDENS,

TEMPLE.

November, 1918.

TABLE OF CONTENTS.

	PAGE
TABLE OF CASES	ix

CHAP. I. NEGLIGENCE	1
II. STATUTORY OBLIGATION TO OBSERVE REGULATIONS .	52
III. LIABILITY	76
IV. PERSONS ENTITLED TO RECOVER	113
V. DAMAGES	117
VI. THE RULE AS TO DIVISION OF LOSS	136
VII. LIMITATION OF LIABILITY	170
VIII. TUG AND TOW	193
IX. FOREIGN SHIPS—FOREIGN LAW—FOREIGN JUDG- MENTS	219
X. COMPULSORY PILOTAGE	236
XI. COLLISION WITH REFERENCE TO (1) THE SHIP- OWNER'S LIABILITY AS CARRIER; (2) THE CON- TRACT OF INSURANCE—CRIMINAL AND OTHER CONSEQUENCES OF COLLISION	245
XII. PRACTICE	266
XIII. COSTS	289
XIV. REGULATIONS FOR PREVENTING COLLISIONS AT SEA	297

APPENDIX.

I.—THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA	491
II.—LOCAL RULES OF NAVIGATION	503
III.—INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW IN REGARD TO COLLISIONS— TRANSLATION OF THE CONVENTION	550

TABLE OF CASES.

A.

	PAGE
"A. M. Ball," 43 Fed. Rep. 170	214
"A. P. Cranmer," 1 Fed. Rep. 255; 8 <i>ibid.</i> 523	195, 388
"A. R. Wetmore" and "Epsilon," 5 Bened. 147	203
"A. W. Thompson," 39 Fed. Rep. 115	397
"Aberdonian," (1910) P. 225; 79 L. J. P. 89; 102 L. T. 543; 11 Asp. M. C. 393	450
Aboulloff v. Oppenheimer (1882), 10 Q. B. D. 295; 52 L. J. Q. B. 1; 47 L. T. 325; 31 W. R. 57	234
"Abraham" (1873), 28 L. T. 775; 2 Asp. M. C. 34	41
"Acacia" (1881), 4 Asp. M. C. 254	94
"Acanthus," (1902) P. 17; 71 L. J. Ad. 14; 85 L. T. 696; 9 Asp. M. C. 276; 11 T. L. R. 160	119
"Actæon" (1853), 1 Sp. 176	272
"Active" (1862), 5 L. T. 773	279, 291
"Ada" and "Sappho" (1873), 27 L. T. 718; 1 Asp. M. C. 475; on app. 28 L. T. 825; 2 Asp. M. C. 4	384, 446
"Ada A. Kennedy," 33 Fed. Rep. 623	372
Adam v. British and Foreign Steamship Co., (1898) 2 Q. B. 430; 79 L. T. 31; 8 Asp. M. C. 427	232
"Adam W. Spies" (1901), 70 L. J. Ad. 25	102, 196
Adams v. Glasgow and South Western Rail. Co. (1875), 3 Court of Sess. 4th ser. 215	114
"Addie B.," 43 Fed. Rep. 163	214, 468
"Addie Schlaefer," 37 Fed. Rep. 382	461
Addison v. Overend (1796), 6 T. R. 766	113
"Admiral Schley," 115 Fed. Rep. 378	195, 373
————— 142 Fed. Rep. 64	360
"Adriatic" (1876), 33 L. T. 102; 3 Asp. M. C. 16	73, 328
————— 17 Otto, 512	397
————— and "Wellington" (1914), 30 T. L. R. 699	200, 524
African Steamship Co. v. Swanzy (1856), 2 K. & J. 660; 25 L. J. Ch. 870; 27 L. T. 248; 4 W. R. 210	176, 187, 283, 295
"Agamemnon," 1 Quebec L. R. 333	22, 209
"Agnes Otto" (1886), 12 P. D. 56; 56 L. J. Ad. 45; 56 L. T. 746; 35 W. R. 550; 6 Asp. M. C. 119	241
"Agra" and "Elizabeth Jenkins" (1867), L. R. 1 P. C. 501; 36 L. J. Ad. 16; 16 L. T. 755; 16 W. R. 735; 4 Moo. P. C. C. (N. S.) 435	49, 289, 393, 395, 446, 447

	PAGE
"Aguadillana" (1889), 60 L. T. 897; 6 Asp. M. C. 390...	365, 467, 473, 475
"Aid" (1881), 6 P. D. 84; 50 L. J. Ad. 40; 44 L. T. 843; 29 W. R.	614; 4 Asp. M. C. 432
"Ailsa," 76 Fed. Rep. 868	362
"Aimo" and "Amelia" (1874), 29 L. T. 118; 21 W. R. 707; 2 Asp. M. C. 96—P. C.	21, 370, 375, 395
Aitchinson v. Lohre. See Lohre v. Aitchison.	
"Alabama" (riding light), 26 Fed. Rep. 866	344
— and "Gamecock," 2 Otto, 695	110
"Alaska," 33 Fed. Rep. 107	86
— 130 U. S. Rep. 201	232
Albano v. Allan Line S.S. Co., (1907) A. C. 193; 96 L. T. 335;	
76 L. J. P. C. 33; 10 Asp. M. C. 365; 23 T. L. R. 344...	384, 391, 394, 444, 446
"Albany," 74 Fed. Rep. 314	480
"Albert Edward" (1875), 44 L. J. Ad. 49; 24 W. R. 179	41, 92
"Albert Mason," 2 Fed. Rep. 321	46
"Alberta," 23 Fed. Rep. 807	358
"Albis" (1895), 73 L. T. 664; 8 Asp. M. C. 92	308
Aldrich v. Simmons (1816), 1 Stark. 214	76
"Aleppo" (1866), 35 L. J. Ad. 9; 14 L. T. 228	48
"Alexander" (1811), 1 Dods. 278	90
"Alexander Folsom" and "Mary B. Mitchell," 44 Fed. Rep. 932	211
"Alexandria" (1872), L. R. 3 A. & E. 574; 41 L. J. Ad. 94; 27 L. T. 565	277
"Alfred" (1849), 7 Not. of Cas. 352; 3 W. Rob. 232	119, 274
"Alfredo," 32 Fed. Rep. 240	321, 372
"Algiers" (flare), 28 Fed. Rep. 240	345
— (flare), 38 Fed. Rep. 526	314, 345
"Algol," (1918) P. 7	329, 443
"Alhambra" (1864), Br. & L. 286	270
"Alice" and "Rosita" (1868), L. R. 2 P. C. 214; 38 L. J. Ad. 20; 19 L. T. 753; 17 W. R. 209; 5 Moo. P. C. (N. S.) 300	269
"Alicia A. Washburn," 19 Fed. Rep. 788	213
"Aline" (1840), 1 W. Rob. 111	89, 93, 94, 170
"Aliwal" (1854), 1 Sp. 96; 18 Jur. 296	56
"Allan" and "Flora" (1866), 14 L. T. 860	436, 437, 469
Allen v. Quebec Warehouse Co. (1886), 12 App. Cas. 101; 56 L. J. P. C. 6; 56 L. T. 30	463
"Allen Green," 60 Fed. Rep. 459	15
Alleson v. Marsh (1688), 2 Vent. 181	110
"Allianca," 39 Fed. Rep. 476	358
"Alma," (1903) P. 55; 72 L. J. Ad. 21; 88 L. T. 64; 51 W. R. 415	234
"Alne Holme" (1881) (first action), 47 L. T. 309; 4 Asp. M. C. 593	93, 94, 276, 285
"Alne Holme" (1881) (second action), 47 L. T. 307; 4 Asp. M. C. 591	95
"Alpha," 27 Fed. Rep. 759	217

TABLE OF CASES.

xi

	PAGE
"Altair," (1897) P. 105; 66 L. J. Ad. 42; 76 L. T. 263; 45 W. R. 622; 8 Asp. M. C. 224	36, 201, 203, 206, 202
"Altenower," 39 Fed. Rep. 118	22, 455
"Altyre," Ad. Div. 27th Feb. 1885	541
"Amalia" (1863) (limitation), Cail v. Papayanni, Br. & Lush. 151; 1 Moo. P. C. N. S. 471; 2 N. R. 533; 32 L. J. Ad. 191; 9 Jur. N. S. 1111; 8 L. T. 805; 12 W. R. 24	97, 175, 180
— (pleadings) (1864), Br. & L. 311	191, 229, 269, 283
— (damages; interest) (1865), 34 L. J. Ad. 21; 5 N. R. 164, note; 13 W. R. 111	187
"Ambassador" (1877), 2 P. D. 37, note	22, 108
"Amboy," 36 Fed. Rep. 925	89
"America," 3 Bened. 424; 10 Blatchf. 155; 2 Otto, 432	9, 19, 381, 448, 458
— 29 Fed. Rep. 304	321
— 38 Fed. Rep. 256	461
"American" and "Syria," Union Steamship Co. v. Owners of "Aracan" (1874), L. R. 4 A. & E. 226; 43 L. J. Ad. 24; 31 L. T. 42; 22 W. R. 845; on app. L. R. 6 P. C. 127; 43 L. J. Ad. 30; 22 W. R. 927; 31 L. T. 42; 22 W. R. 927; 2 Asp. M. C. 350	15, 185, 193, 194, 196, 197, 275, 313, 323, 388, 446
"Amerika," (1914) P. 157; 86 L. J. P. 58; affd. (1917) App. Cas. 38; 116 L. T. 34; 61 S. J. 158; 33 T. L. R. 135	193
Amos v. Chadwick (1877), 4 Ch. D. 869	276
"Ancona," (1915) P. 200; 84 L. J. P. 183	537
"Andalusian" (1878) (launch), 2 P. D. 231; 46 L. J. Ad. 77	274, 482
— (limited liability) (1878), 3 P. D. 182; 47 L. J. Ad. 65; 39 L. T. 204; 27 W. R. 172; 4 Asp. M. C. 22	175, 178, 179, 187
Andus v. "Saratoga," 1 Fed. Rep. 730	31
"Anerly," 58 Fed. Rep. 794	33
Anglo-Australian St. Nav. Co. v. Cornell Steamboat Co., 32 Fed. Rep. 798	215
"Anglo-Indian" (1875), 3 Asp. M. C. 1; 33 L. T. 233; 23 W. R. 882—P. C.	314, 315, 340
"Ann" (1860), Lush. 55	269, 293, 380
"Ann Caroline," 2 Wall. 538	377, 444
"Ann and Mary" (1843), 2 W. Rob. 189; 7 Jur. 999	270, 274
"Anna and Bertha" (1891), 64 L. T. 332; 7 Asp. M. C. 31	279
"Anna Johnson," 2 Stuart (V. Ad. Canada), 43	220
"Annapolis" and "Golden Light" (1861), Lush. 355; 5 L. T. 37; 1 Mar. Law Cas. O. S. 183	203
— and "Johanna Stoll" (1861), Lush. 295; 30 L. J. Ad. 201; 4 L. T. 417	219, 227, 236
"Annie" (1887), 12 P. D. 50; 56 L. J. Ad. 70; 56 L. T. 500; 35 W. R. 366; 6 Asp. M. C. 117	90, 127, 133
— (1909) P. 176; 100 L. T. 415; 78 L. J. P. 81; 11 Asp. M. C. 213	116, 281, 370, 375, 419, 420
"Ainnie Williams," 20 Fed. Rep. 866	218
"Annot Lyle" (1886), 11 P. D. 114; 55 L. J. Ad. 62; 55 L. T. 576; 34 W. R. 647; 6 Asp. M. C. 50—C. A.	4, 27, 42, 462, 463

	PAGE
Anonymous Case (1808), 1 Camp. 516, note	43
————— (1685), 1 Keb. 41	86
————— or Delanoy v. Robson (1814), 5 Taunt. 605	257
"Anselm," (1907) P. 151; 97 L. T. 16; 76 L. J. P. 54; 10 Asp. M. C. 438	59, 293, 299, 449, 450
"Anselma de Larinaga" (1912), 29 T. L. R. 587	120, 127, 131
"Ansgar," 115 Fed. Rep. 440	477
"Antilope" (1873), L. R. 4 A. & E. 33; 42 L. J. Ad. 42; 28 L. T. 74; 21 W. R. 464; 1 Asp. M. C. 477, 513	270
"Apollo," Little v. Port Talbot Co., (1891) App. Cas. 499; 61 L. J. Ad. 25; 65 L. T. 590; 7 Asp. M. C. 115	107, 244
"Appendix" (1872), 2 Pritch. Ad. Dig. 1761	131
"Arabian," 2 Stuart (V. Ad. Canada), 73	59, 378
"Aras," (1907) P. 28; 96 L. T. 95; 76 L. J. P. 37; 10 Asp. M. C. 358	11, 360, 361
"Araxes" and "Black Prince," General Iron Screw Co. v. Moss (1861), 15 Moo. P. C. 122; 5 L. T. 39	8, 9, 10, 381, 447
"Ardandhu" (1887), 11 P. D. 40; 12 App. Cas. 256; 56 L. J. Ad. 49; 56 L. T. 345; 35 W. R. 783; 6 Asp. M. C. 124	284
"Argentino" (1888), 13 P. D. 19; 14 App. Cas. 519; 59 L. J. Ad. 17; 61 L. T. 706; 6 Asp. M. C. 433—H. L.	117, 118, 130, 131
"Argo" (infringement) (1900), 82 L. T. 602; 9 Asp. M. C. 74—C. A.	60, 322
————— (narrow channel) (1857), Swab. 462	32, 35
"Ariadne," 2 Bened. 472; 13 Wall. 475	75, 457
————— See Little v. Burns.	
"Aristocrat," (1908) P. 9; 77 L. J. P. 57; 97 L. T. 838; 10 Asp. M. C. 567	300, 450
"Arklow," Emery v. Cichero (1883), 9 App. Cas. 136; 53 L. J. P. C. 9; 50 L. T. 305; 5 Asp. M. C. 219—P. C.	60
"Armonia," 67 Fed. Rep. 362	44
Armstrong v. Gaselee (1889), 22 Q. B. D. 250; 58 L. J. Q. B. 149; 59 L. T. 891; 37 W. R. 462; 6 Asp. M. C. 353	267
————— v. Lancashire and Yorkshire Rail. Co. (1875), L. R. 10 Ex. 47; 44 L. J. Ex. 89; 33 L. T. 228; 23 W. R. 295	114
Arnison v. Smith (1889), 40 Ch. D. 567; 58 L. J. Ch. 335; 60 L. T. 206; 37 W. R. 405	234
"Arran," 9 Quebec L. R. 278; Cook, V. Ad. Rep. Quebec, 22.37, 209, 463	
"Arratoon Apcar," Ocean Steamship Co. v. Apcar & Co. (1889), 15 App. Cas. 37; 59 L. J. P. C. 49; 62 L. T. 331; 38 W. R. 481; 6 Asp. M. C. 310, 491—P. C.	311, 408, 414
Arthur v. Ford, Seld. Ser. Admiralty, II. lxxxiv.	161
"Arthur Gordon" and "Independence," Maddox v. Fisher (1860), Lush. 270; 14 Moo. P. C. 103; 4 L. T. 563; 9 W. R. 582. .14, 15, 19, 194, 380, 386, 447, 459, 471, 479, 483	
"Arturo," 6 Fed. Rep. 308	100, 208, 216
"Ashbourne," 99 Fed. Rep. 111	263
"Ashton," (1905) P. 21; 92 L. T. 811; 74 L. J. P. 28; 10 Asp. M. C. 88	384, 399, 423, 424, 516

	PAGE
"Asia," (1891) P. 121; 60 L. J. Ad. 38; 64 L. T. 327; 7 Asp. M. C. 25	295
Asiatic Petroleum Co. v. Lennard's Carrying Co., (1914) 1 K. B. 419; 83 L. J. K. B. 861; 84 L. J. K. B. 1281; (1915) App. Cas. 705; 20 Com. Cas. 283; 113 L. T. 195; 59 S. J. 411; 31 T. L. R. 294	181
"Assaye," (1905) P. 289; 94 L. T. 102; 74 L. J. P. 145; 10 Asp. M. C. 183	423
"Assunta," (1902) P. 150; 71 L. J. Ad. 75; 86 L. T. 660; 9 Asp. M. C. 302	267
"Assyrian" (1890), 63 L. T. 91; 6 Asp. M. C. 525	274
"Astrakhan," (1910) P. 172; 79 L. J. P. 78; 102 L. T. 539; 26 T. L. R. 329; 11 Asp. M. C. 390	75, 130
"Atlanta," 41 Fed. Rep. 639	23
"Athabasca," 45 Fed. Rep. 651	213, 479
"Athol" (1842), 1 W. Rob. 374	109, 280
Atkinson v. Newcastle and Gateshead Waterworks Co. (1877), 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794	485
"Atlas" (1846), 2 Mar. Law Cas. O. S. Dig. 1480	466
——— 10 Blatchf. 459; 3 Otto, 302	31, 110, 153, 211, 218, 457
"Atlee," 12 Fed. Rep. 734	125
"Attila," 5 Quebec L. R. 340	354, 355, 365, 374
Attorney-General v. Norstedt (1816), 3 Price, 97	94
Attwood v. Sellar (1880), 5 Q. B. D. 286; 49 L. J. Q. B. 515; 42 L. T. 644; 28 W. R. 604; 4 Asp. M. C. 283—C. A.	204
"Augusta" (1886), 56 L. T. 58; 57 <i>ibid.</i> 326; 6 Asp. M. C. 58, 161..	226, 241
"Aurania" and "The Republic," 29 Fed. Rep. 98	416
"Aureole," 103 Fed. Rep. 699	391
"Aurora" (1861) (division of loss), Lush. 327	56
——— 2 Stuart, V. Ad. Rep. 52 (Canada)	59
——— and "Robert Ingram" (1860), Lush. 327	143, 269, 315
Australian Direct Steam Navigation Co., <i>In re</i> (1875), L. R. 20 Eq. 325; 44 L. J. Ch. 676	89, 94
Australian Steam Navigation Co. v. Smith ("Victoria" and "Keilawarra") (1889), 14 App. Cas. 318; 61 L. T. 134	426
"Avon," 22 Fed. Rep. 905	456
——— and "Thomas Joliffe," (1891) P. 7; 63 L. T. 712; 39 W. R. 176; 6 Asp. M. C. 605	154, 208, 211, 218

B.

"B. & C.," 18 Fed. Rep. 543	146
"B. C. Terry," 30 Fed. Rep. 711	472
"B. K. Washburn," 19 Fed. Rep. 788	484
"Badger State," 8 Fed. Rep. 526	47
"Bahia" (1864), Br. & L. 61, 292; 11 Jur. N. S. 90	251

	PAGE
Baker v. Corditt, Seld. Ser. Admiralty, II. lxxxiii.	159
— v. Power, 14 Fed. Rep. 483	98
Ball v. Berwind, 29 Fed. Rep. 541	104
"Baltic," 2 Bened. 452	42
"Baltimore," 34 Fed. Rep. 660	403
— (damages), 8 Wall. 377	125
"Banshee" (No. 1, practice) (1887), 56 L. T. 725; 6 Asp. M. C. 130	275
— (No. 2, overtaken ship) (1887), 57 L. T. 841; 6 Asp. M. C. 221—C. A.	309, 391, 393, 395
"Barcelona," 10 Quebec L. R. 305	352
Barker v. Highley (1863), 5 C. B. N. S. 27; 32 L. J. C. P. 270; 10 Jur. N. S. 391; 9 L. T. 228; 11 W. R. 968	285
"Barnstable," 181 U. S. Rep. 464	101, 102
"Baron Aberdare" and "Gertrude" (1888), 12 P. D. 204; 13 <i>ibid.</i> 105; 56 L. J. Ad. 106; 57 L. T. 883; 59 <i>ibid.</i> 251; 36 W. R. 191, 616; 6 Asp. M. C. 224, 315	120
Barracrough v. Brown (1895), 65 L. J. Q. B. 333; 74 L. T. 86; 8 Asp. M. C. 134; <i>affd.</i> , (1897) App. Cas. 615; 76 L. T. 797	106
"Bartley" (1857), Swab. 198	276
Barwick v. English Joint Stock Bank (1867), L. R. 2 Ex. 259	80
"Bassett Hound" (1894), 71 L. T. 12; 7 Asp. M. C. 467	340
Bastard v. Smith (1839), 10 Ad. & Ell. 213	271
"Batavier" (1845) (at anchor; pilot), 2 W. Rob. 407	43, 459
— (costs) (1890), 15 P. D. 37; 59 L. J. Ad. 54; 62 L. T. 406; 38 W. R. 522; 6 Asp. M. C. 500	290, 291
— (speed; swell) (1854), 1 Sp. 378; on app. nom. Nether- lands Steamboat Co. v. Styles, 9 Moo. P. C. 286	39, 40, 454, 478, 481
"Battler," 62 Fed. Rep. 612	352
Baumwooll v. Furness, (1893) A. C. 8; 68 L. T. 1; 62 L. J. Q. B. 201; 7 Asp. M. C. 263	180
Baxter v. International Contracting Co., 65 Fed. Rep. 250	105
"Bay Queen," 42 Fed. Rep. 271	484
"Bay State," 3 Blatchf. 48	427
Beard v. General Omnibus Co., (1900) 2 Q. B. 530	79
"Bearn," (1906) P. 48; 94 L. T. 265; 75 L. J. P. 9; 10 Asp. M. C. 208	106, 244
"Beaver," 2 Bened. 118	42
Beckham v. Chapman, "Little Betty" and "Jonas" (1695), Marsd. Ad. Ca. 270	162
Bede S.S. Co. v. River Wear Commissioners, (1907) 1 K. B. 310; 96 L. T. 370; 76 L. J. K. B. 434; 10 Asp. M. C. 370	107
"Behera," 6 Fed. Rep. 400	461
Belden v. Chase, 43 Dav. 674; 150 U. S. Rep. 674	154, 392
"Belgenland" (damages), 36 Fed. Rep. 504	129
— 7 Dav. 355	302, 454
"Belgie" (1875), 2 P. D. 57 (note); 46 L. J. Ad. 58 (note); 35 L. T. 929; 3 Asp. M. C. 348	16, 205, 244
Belitha v. Burwood, Seld. Ser. Admiralty, II. lxxxiv.	160

	PAGE
"Bellanoch," (1907) P. 170; 97 L. T. 315; 76 L. J. P. 83; on app. (1907) A. C. 269; 97 L. T. 315; 76 L. J. P. 160; 10 Asp. M. C. 483	451
"Belcairn" (1886), 10 P. D. 161; 55 L. J. Ad. 3; 53 L. T. 686; 34 W. R. 55; 5 Asp. M. C. 503—C. A.	284
"Bellerophon," H.M.S. (discovery) (1874), 2 Asp. M. C. 449	271
——— (liability) (1876), 44 L. J. Ad. 7; 33 L. T. 412; 3 Asp. M. C. 58	478
"Ben Hooley," 6 Fed. Rep. 318	212
"Benares" (lien) (1850), 7 Not. of Cas. 50, Suppl.; 14 Jur. 581..93, 175 ——— (infringement) (1883), 48 L. T. 127; 5 Asp. M. C. 53; on app. 9 P. D. 16; 53 L. J. Ad. 2; 49 L. T. 702; 32 W. R. 268; 5 Asp. M. C. 171	443
"Benayo" (1886) (not reported)	271
"Bendo" and "Sampson," 44 Fed. Rep. 439	420
"Benefactor," 14 Blatchf. 254	476
"Bengal" (1859), Swab. 468; 5 Jur. N. S. 1085	278
"Benjamin F. Hunt, Jr.," 34 Fed. Rep. 816	127
"Benmore" (1873), L. R. 4 A. & E. 132; 43 L. J. Ad. 5; 22 W. R. 190	273
Bennett v. Lord Bury (1880), 5 C. P. D. 339; 49 L. J. C. P. 411; 42 L. T. 480	276
Bennett Steamship Co. v. Hull Mutual Steamship Protecting Society, (1914) 3 K. B. 57; 83 L. J. K. B. 1179; 111 L. T. 484; 12 Asp. M. C. 522; 19 Com. Cas. 353; 30 T. L. R. 515; (decision of Pick- ford, 82 L. J. K. B. 1003; (1913) 3 K. B. 372, aff.)	254
"Berkshire." See "Scotia."	
"Bernard Hall" (1902), 71 L. J. Ad. 72; 86 L. T. 658; 9 Asp. M. C. 300	360
"Bernina," No. 1 (bill of lading) (1886), 12 P. D. 36; 56 L. J. Ad. 38; 56 L. T. 450; 35 W. R. 214; 6 Asp. M. C. 112...124, 184, 247, 248 ——— No. 2, Mills v. Armstrong (overruling Thorogood v. Bryan, 12 P. D. 58) (1887), 13 App. Cas. 1; 57 L. J. Ad. 65; 58 L. T. 423; 36 W. R. 870; 6 Asp. M. C. 257—H. L. ...26, 36, 37, 111, 114, 140, 141, 143, 153, 154	126
"Bernina" (1886) (damages), 55 L. T. 781; 6 Asp. M. C. 65.....	118
"Berrington" and "Ostrich," Ad. Div. 9th March, 1883	541
"Beryl" (1884), 9 P. D. 4; 49 L. T. 748; 5 Asp. M. C. 193; 32 W. R. 648; on app. 9 P. D. 137; 53 L. J. Ad. 75; 51 L. T. 554; 33 W. R. 191; 5 Asp. M. C. 321—C. A. 14, 61, 274, 303, 304, 381. 391, 402, 405, 410, 411	381
"Beta," 44 Fed. Rep. 389	120
——— (jurisdiction) (1869), L. R. 2 P. C. 447; 34 L. J. Ad. 76; 20 L. T. 988; 17 W. R. 933	280
——— (speed) (1884), 9 P. D. 134; 51 L. T. 154; 33 W. R. 190; 5 Asp. M. C. 276	364
"Betsy Caines" (1826), 2 Hag. Ad. 28	127
Betts v. De Vitre (1867), L. R. 3 Ch. 429; 37 L. J. Ch. 325; 18 L. T. 165; 16 W. R. 529	80

	PAGE
<i>Boucker v. Aberdeen Steam Trawling and Fishing Co.</i> (1910), S. C.	
655— <i>Ct. of Sess.</i>	394
" <i>Bianca</i> " (1883), 8 P. D. 91; 52 L. J. Ad. 56; 48 L. T. 440; 31	
W. R. 954; 5 Asp. M. C. 60	281
" <i>Bilbao</i> " (1860), Lush. 149; 3 L. T. 338	93, 222, 243, 387
" <i>Biola</i> " (1876), 34 L. T. 185; 24 W. R. 524; 3 Asp. M. C. 125	273
" <i>Birkenhead</i> " (1849), 3 W. Rob. 75	109, 401
<i>Birkley v. Presgrave</i> (1801), 1 East, 220	246
<i>Bisell v. "Alexander,"</i> 3 Fed. Rep. 671	215
" <i>Bitinia</i> " (1912), 82 L. J. P. 5; 29 T. L. R. 99—C. A.; <i>affd.</i> (1912)	
P. 186; 107 L. T. 208; 12 Asp. M. C. 237	300, 536
" <i>Bjorn</i> " (1882), 9 P. D. 36 (n.); 5 Asp. M. C. 212 (n.)	277
<i>Blaanpot v. Da Costa</i> , 1 Eden, 130	257
" <i>Black Prince</i> " (1860), Lush. 568; on app. 15 Moo. P. C. 122; 5	
L. T. 39	128, 293, 381
" <i>Blackheath</i> ," 195 U. S. Rep. 361	93
<i>Blaikie v. Stenbridge</i> (1859), 6 C. B. N. S. 894; 28 L. J. C. P. 329	76
" <i>Blanche L.</i> ," 68 Fed. Rep. 939	213
" <i>Blenheim</i> " (damages) (1854), 1 Sp. 285	15, 123, 372, 444
— (launch) (1846), 2 W. Rob. 421; 4 Not. of Cas. 393	481
— 17 Fed. Rep. 608	119
" <i>Blessing</i> " and " <i>William and John</i> " (not reported)	163
<i>Blewitt v. Hill</i> (1810), 13 East, 13	82
" <i>Bloomfield</i> " (1905), 10 Asp. M. C. 194	313
" <i>Blossom</i> ," <i>Olcott</i> , 188	457
" <i>Blow-Boat</i> ," (1912) P. 217; 82 L. J. P. 24	144, 178, 287
<i>Blowers v. Starlinge</i> , Seld. Ser. Admiralty, II. lxxxiv.	160
" <i>Blue Bell</i> ," (1895) P. 242; 64 L. J. Ad. 71; 72 L. T. 540; 7 Asp.	
M. C. 601	344, 424, 539
<i>Plythe v. Birmingham Water Works Co.</i> (1856), 11 Exch. 781; 25	
L. J. Ex. 213; 2 Jur. N. S. 333; 4 W. R. 294	3
— <i>v. Marsh</i> , 1 McCord, 360	252
" <i>Boanerges</i> " (1865), 2 Mar. Law Cas. O. S. 239	11, 437
" <i>Bodlewell</i> ," (1907) P. 286; 96 L. T. 854; 76 L. J. P. 61; 10 Asp.	
M. C. 479	130
" <i>Bold Buccleuch</i> ," <i>Harmer v. Bell</i> (1851), 3 W. Rob. 220; on app.	
7 Moo. P. C. 267	89, 90, 94, 96, 100, 173, 278
— (1853), 1 Pritch. Ad. Dig. 2nd ed. 144	454
" <i>Bolina</i> " (1844), 3 Not. of Cas. 208	20, 41
" <i>Bolivia</i> ," 49 Fed. Rep. 169	75, 352
" <i>Bordentown</i> ," 40 Fed. Rep. 682	217
" <i>Borodino</i> " (1845), 5 L. T. 291	113, 280
" <i>Borussia</i> " (1856), Swab. 94; 4 W. R. 503	209, 468
" <i>Boskenna Bay</i> " and " <i>Earl of Dumfries</i> ." See " <i>Earl of Dumfries</i> ."	
<i>Boston Towboat Co. v. Winslow</i> , 76 Fed. Rep. 595	73
" <i>Bothnia</i> " (1860), Lush. 62; 29 L. J. Ad. 65; 2 L. T. 160	42, 269
" <i>Bottle Imp</i> " (1873), 42 L. J. Ad. 48; 28 L. T. 286	42
" <i>Boucau</i> ," (1909) P. 163; 100 L. T. 617; 78 L. J. P. 87; 11 Asp.	
M. C. 240	22

TABLE OF CASES.

xvii

	PAGE
<i>Boucher v. Clyde Shipping Co.</i> , (1904) 2 Ir. Rep. 129	154
<i>Boucher v. Lawson</i> (1734), Cas. temp. Hardwicke, 85; Cun. 241..174, 250	
" <i>Bougainville</i> " and " <i>James C. Stevenson</i> ," <i>Beal v. Marchais</i> (1873), L. R. 5 P. C. 316; 28 L. T. 822; 21 W. R. 653; 2 Asp. M. C. 1... 57, 307, 309, 321, 322, 387, 395, 413, 439	
" <i>Bourgogne</i> ," (1899) App. Cas. 431; 68 L. J. Ad. 104; 80 L. T. 845; 8 Asp. M. C. 550—H. L.	266
139 Fed. Rep. 434	358
<i>Bowcher v. Noidstrom</i> (1810), 1 Taunt. 568	77
" <i>Bowden</i> ," 78 Fed. Rep. 649	478
<i>Bower v. Peate</i> (1876), 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. 321	83
" <i>Bowesfield</i> " (1884), 51 L. T. 128; 5 Asp. M. C. 265	277
<i>Bradburn v. Great Western Rail. Co.</i> (1875), L. R. 10 Ex. 1 ...133, 259	
<i>Brake v. "Piper"</i> , Seld. Ser. Admiralty, II. lxxxiv.	161
" <i>Bravo</i> " (1912), 12 Asp. M. C. 311; 108 L. T. 430; 29 T. L. R. 122	290
" <i>Breadalbane</i> " (1881), 7 P. D. 186; 46 L. T. 204; 4 Asp. M. C. 505	276, 339, 341, 372, 377, 379, 417
" <i>Breeze</i> " (1884), 2 Pr. Ad. Dig. 1762	131
" <i>Bridgeport</i> " (speed; inevitable accident), 35 Fed. Rep. 159	44
14 Wall. 116; 7 Blatchf. 361	460
6 Blatchf. 3	470
<i>Briggs v. Whitehall</i> , 68 Fed. Rep. 1022	366
" <i>Brinio</i> " (1891), 90 L. T. Journal, 249	179
<i>Brinsmead v. Harrison</i> (1872), L. R. 7 C. P. 547; 41 L. J. C. P. 190; 27 L. T. 99; 20 W. R. 784—Ex. Ch.	110
" <i>Bristol</i> ," 11 Fed. Rep. 156	380
29 Fed. Rep. 867	153.
" <i>Britannia</i> ," (1905) P. 98; 92 L. T. 634; 74 L. J. P. 46; 10 Asp. M. C. 65	360
46 Davis, 130; 34 Fed. Rep. 546.....31, 391, 392, 394, 475	
" <i>Britannic</i> ," 39 Fed. Rep. 395	153, 358, 410
<i>British Columbia Towing and Transport Co. v. Sewell</i> , 9 Duval (Canada), 527	187, 203
" <i>British Commerce</i> " (1884), 9 P. D. 128; 53 L. J. Ad. 72; 51 L. T. 604; 33 W. R. 200; 5 Asp. M. C. 335	128
" <i>British Empire</i> ," 24 Fed Rep. 493	469
" <i>British Princess</i> " and " <i>Sedmi Dubrovacki</i> ," Mitch. Mar. Reg. March, 1878	74
<i>British S. A. Co. v. Cnia. de Moçambique</i> , (1893) App. Cas. 617; 63 L. J. Q. B. 70; (1893) App. Cas. 602; 6 R. 1; 69 L. T. 604.....	222
" <i>Broadmayne</i> ," (1916) P. 64; 85 L. J. P. 153; 114 L. T. 891; 60 S. J. 367; 32 T. L. R. 304—C. A.	280
" <i>Bromsgrove</i> ," (1912) P. 182; 82 L. J. P. 2; 106 L. T. 815	357, 538
<i>Brooks v. Macdonell</i> (1835), 1 Y. & C. Ex. 500	257
" <i>Broomfield</i> " (1905), 94 L. T. 109; 10 Asp. M. C. 194	386
<i>Brown v. Gravenor</i> , Seld. Ser. Admiralty, II. lxxxiv.	162
— <i>v. Mallet</i> (1848), 5 C. B. 599; 17 L. J. C. P. 227; 12 Jur. 204	17, 103

	PAGE
Brown v. Wilkinson (1846), 15 M. & W. 391; 6 L. J. Ex. 34.....	171,
	173, 176, 185
"Brunel," (1900) P. 24; 69 L. J. Ad. 8; 81 L. T. 500; 48 W. R. 243;	
9 Asp. M. C. 10	179
Brunsdon v. Humphrey (1883), 11 Q. B. D. 712; 14 <i>ibid.</i> 141; 52	
L. J. Q. B. 756; 53 <i>ibid.</i> 476; 51 L. T. 529; 32 W. R. 944.....	277
"Bruxellesville" (damage), (1908) P. 312; 98 L. T. 251; 77 L. J. P.	
156; 11 Asp. M. C. 24	120, 124
— (collision); (1907) Fos. 323, 329; Ship. Gaz., 23rd	
Nov. 1907	120
Bryce v. Canadian Pacific Ry. Co., 13 Brit. Col. Rep. 446	423
Buchanan v. Rucker (1808), 1 Camp. 63; 9 East, 192	234
"Buckhurst" (1881), 6 P. D. 152; 51 L. J. Ad. 10; 46 L. T. 108; 30	
W. R. 232; 4 Asp. M. C. 484	22, 67, 290, 320, 327, 328, 477
"Buffalo," 50 Fed. Rep. 628	316
Buller v. Fisher (1799), 3 Esp. 67; 1 Peake, 183; 3 Taunt. 4.....	247, 251
Bunne c. Williamson, Seld. Ser. Admiralty, II. lxxxiii.	159
Burger v. Indemnity Mutual Insurance Co., (1900) 2 Q. B. 348; 82	
L. T. 831; 48 W. R. 643; 9 Asp. M. C. 85	254
"Burlington" (1895), 72 L. T. 602; 8 Asp. M. C. 38—C. A. ...	107, 244
Burnand v. Nerot (1824), 1 C. & P. 578	271
— v. Rodocanachi (1882), 7 App. Cas. 333; 51 L. J. Q. B. 548;	
47 L. T. 277; 31 W. R. 65	257
Burnard v. Aaron (1862), 31 L. J. C. P. 334	84
"Burns," (1907) P. 137; 96 L. T. 684; 76 L. J. P. 41; 10 Asp. M. C.	
424	277
Burrell v. Macbrayne (1891), 18 Ct. of Sess. Cas. 4th ser. 1048	209
Burrows v. Gower, 119 Fed. Rep. 616	326, 350
Burton v. English (1883), 12 Q. B. D. 218; 53 L. J. Q. B. 133;	
49 L. T. 768; 32 W. R. 655; 5 Asp. M. C. 187	246
Bury c. Gold, Seld. Ser. Admiralty, II. lxxxiv.	160
"Bushire" (1886), 52 L. T. 740; 5 Asp. M. C. 416	134, 154, 249
Busk v. Royal Exchange Assurance Co. (1818), 2 B. & Ald. 73	252
Bussy v. Donaldson, 4 Dallas, 194	242
Butterfield v. Boyd, 4 Blatchf. 350	480
"Byfoged Christensen," and "William Frederick (1879), 4 App.	
Cas. 669; 41 L. T. 535; 28 W. R. 233; 4 Asp. M. C. 201—H. L.	7, 12,
	368, 394, 442
Byrne v. Boadle (1864), 2 H. & C. 722; 33 L. J. Ex. 13; 12 W. R.	
279; 9 L. T. 450	45
"Byron," 2 New South Wales L. R. Ad. 1	313, 374, 386
— Ship. Gaz., Feb. 9, 1905	361
"Bywell Castle" (1879), 4 P. D. 219; 41 L. T. 747; 28 W. R. 293;	
4 Asp. M. C. 207	12, 13, 385, 427

C.

"C. M. Palmer" and "Larnax" (1873), 29 L. T. 120; 21 W. R.	
702; 2 Asp. M. C. 94—P. C.	12, 13, 315, 316
"C. P. Raymond," 28 Fed. Rep. 765	127

TABLE OF CASES.

xix

	PAGE
"C. R. Stone," 49 Fed. Rep. 475	438
"C. S. Butler" (1874), L. R. 4 A. & E. 238; 31 L. T. 549; 23 W. R. 113; 2 Asp. M. C. 408	263, 264, 287, 301, 487
— and "Baltic." (salvage) (1874), L. R. 4 A. & E. 178; 43 L. J. Ad. 17; 30 L. T. 475; 22 W. R. 759; 2 Asp. M. C. 237...	25
"Cachapool" (1882), 7 P. D. 217; 43 L. T. 171; 4 Asp. M. C. 502	37, 43, 482
"Cadeby," (1909) P. 257; 101 L. T. 48; 78 L. J. P. 85	41
"Cairnbahn," (1914) P. 25; 83 L. J. P. 11; 110 L. T. 230; 12 Asp. M. C. 455; 30 T. L. R. 82—C. A. 1, 18, 118, 145, 146, 151, 154, 200, 201, 206	
— (No. 2), 30 T. L. R. 309—C. A.	128
"Calabar," Moss v. The African Steamship Co. (1868), L. R. 2 P. C. 238; 19 L. T. 768	456
"Calcutta" (bail) (1869), 17 W. R. 744	110, 185
— (disabled ship) (1869), 21 L. T. 768; 3 Mar. Law Cas. O. S. 336	444
"Caliph," (1912) P. 213; 82 L. J. P. 27; 107 L. T. 274; 12 Asp. M. C. 224; 28 T. L. R. 597	133
"Calla" (1859), Swab. 465	329, 411
"Calliope," (1891) App. Cas. 11; 60 L. J. Ad. 28; 63 L. T. 781; 39 W. R. 461; 6 Asp. M. C. 585—H. L.	106
"Calypso" (1856), Swab. 28	276
— and "Mississippi," Mitch. Mar. Reg. 1878	61, 433
"Cambria," Ad. Div. May, 1887	274
"Cambridge," "Underhill," and "Chase," 4 Bened. 366	211
"Cambusdoon," 30 Fed. Rep. 704	333
"Camellia" (1883), 9 P. D. 27; 53 L. J. Ad. 12; 50 L. T. 126; 32 W. R. 495; 5 Asp. M. C. 197	295
"Cameo" (1862), Lush. 408; 5 L. T. 773	277
"Campania," (1901) P. 289; 70 L. J. Ad. 101; 84 L. T. 673; 9 Asp. M. C. 177	10, 49, 353, 355, 356, 359
Campbell v. Pennsylvania Rail. Co., 85 Fed. Rep. 462	80, 456
"Canada" (1860), Lush. 586	119
Canada Shipping Co. v. British Shipowners' Mutual Protection Association (1889), 22 Q. B. D. 727; 23 <i>ibid.</i> 342; 58 L. J. Q. B. 343, 462; 60 L. T. 863; 61 <i>ibid.</i> 312; 38 W. R. 87; 6 Asp. M. C. 388, 422	186
"Canadian" (1842), 1 W. Rob. 343	270
Cannan v. Meaburn (1822), 1 Bing. 465	175
"Captain Weber," 89 Fed. Rep. 957	313
"Car Float" (No. 4), 89 Fed. Rep. 877	216
Cardiff Steamship Co. v. Barwick. See "Raisby."	
Cargo <i>ex</i> Argos (1880), L. R. 5 P. C. 134; 42 L. J. Ad. 49; 28 L. T. 77; 21 W. R. 707; 2 Asp. M. C. 6	124
Cargo <i>ex</i> Capella (1867), L. R. 1 A. & E. 356; 16 L. T. 800	262
Cargo <i>ex</i> Galam (1863), Br. & Lush. 167; 2 Moo. P. C. N. S. 216; 10 Jur. N. S. 477; 33 L. J. Ad. 97; 9 L. T. 550; 12 W. R. 495...	94
Cargo <i>ex</i> Woosung (1876), 1 P. D. 230; 35 L. T. 8; 25 W. R. 1; 3 Asp. M. C. 45—C. A.	346

	PAGE
"Carinthia." See "Servia."	
"Carl Johan" (1819) (cited), 3 Hag. Ad. 186	170, 229
"Carlotta," (1899) P. 223; 68 L. J. Ad. 87; 80 L. T. 664; 8 Asp. M. C. 544	301, 325, 487, 539
Carmichael v. Liverpool Sailing-ship Owners' Mutual Indemnity Association (1887), 19 Q. B. D. 242; 56 L. J. Q. B. 428; 57 L. T. 550; 35 W. R. 793; 6 Asp. M. C. 184—C. A.	186
"Carnarvon Castle" (1878), 38 L. T. 736; 26 W. R. 876; 3 Asp. M. C. 607—C. A.	276
"Caro," 23 Fed. Rep. 734	317
"Carolus Rotchers" (1837), 3 Hag. Ad. 343 (note)	14
Carr v. Francis Times & Co., (1902) App. Cas. 176; 71 L. J. K. B. 361; 85 L. T. 144	225
"Carrier Dove" (1863), Bf. & Lush. 113	468
"Carroll," 1 Bened. 286; 8 Wall. 302	12, 47, 369, 388, 399
"Carron" (1853), 1 Sp. 91	41, 349
Carshore v. North Eastern Ry. Co. (1885), 29 Ch. D. 344; 54 L. J. C. 760; 52 L. T. 232; 33 W. R. 420	281
"Cartsburn" (1880), 5 P. D. 59; 49 L. J. Ad. 14; 41 L. T. 710; 28 W. R. 378; 4 Asp. M. C. 202—C. A.	281
"Castle Rising" (1886) (not reported)	262
"Castlegate," (1893) App. Cas. 38; 62 L. J. P. C. 17; 68 L. T. 99; 41 W. R. 349; 7 Asp. M. C. 284—H. L.	98
"Castleventry," Ship. Gaz., April 16th, 1904	362
Castrique v. Behrens (1863), 3 E. & E. 709; 30 L. J. Q. B. 163; 7 Jur. N. S. 1028; 4 L. T. 52	235
Castrique v. Imrie (1870), L. R. 4 H. L. 414; 39 L. J. C. P. 350; 4 L. T. 143; 19 W. R. 1—H. L.	234
"Catalina" (1854), 2 Sp. 23	291
"Catalonia," 43 Fed. Rep. 396	60, 352, 358
Catharine v. Dickinson, 17 How. 170	457
"Cathay" (limitation) (1900), 69 L. J. Ad. 89; 82 L. T. 823; 9 Asp. M. C. 100	189
——— (fog) (1899), 81 L. T. 391; 9 Asp. M. C. 35	364, 368, 409
"Cathcart" (1867), L. R. 1 A. & E. 314; 16 L. T. 211	279
"Catherina Maria" (1866), L. R. 1 A. & E. 53; 12 Jur. N. S. 380..	272
"Catherine" (1851), 15 Jur. 231	149
"Catherine of Dover" (1831), 2 Hag. Ad. 145	3, 167
Caton v. Romney, 13 Wend. 387	246
"Catterina Chiazzare" (1876), 1 P. D. 368; 45 L. J. Ad. 105; 34 L. T. 588; 3 Asp. M. C. 170	233
Cattlin v. Hills (1849), 8 C. B. 123	26, 114
Cavan v. Stewart (1816), 1 Stark. 525	234
"Cayuga," 14 Wall. 270	309, 417, 437
——— (damages), 7 Blatchf. 385	129
——— (tug and tow), 16 Wall. 177	216
Cayzer v. Carron Company (1884), 9 App. Cas. 873; 54 L. J. Ad. 18; 52 L. T. 361; 33 W. R. 281; 5 Asp. M. C. 371..	28, 30, 31, 35, 36, 40, 41, 143, 145, 303, 456, 472, 484, 541
"Cella" (1888), 13 P. D. 82; 57 L. J. Ad. 55; 59 L. T. 125; 36 W. R. 540; 6 Asp. M. C. 293	89, 278

TABLE OF CASES.

xxi

	PAGE
"Celt" (1837), 3 Hag. Ad. 321	73, 143, 167, 291
"Cepheus," 24 Fed. Rep. 507	127
"Ceres" (1857), Swah. 250	161
"Ceto" (1889), 14 App. Cas. 670; 62 L. T. 1; 6 Asp. M. C. 479— H. L.	14, 293, 361, 400, 401, 402, 410, 411
Chadwick v. City of Dublin Steam Packet Co. (1856), 6 Ell. & B. 771; 3 Jur. N. S. 207	372
"Challenge" and "Duc d'Aumale," (1905) P. 198; 93 L. T. 390; 74 L. J. P. 55; 10 Asp. M. C. 105	15, 194, 360
"Chalmette," 52 Fed. Rep. 174	477
Chamberlain v. Ward, 21 How. 548	75, 457
"Champagne," 60 Fed. Rep. 299	315
"Chance," Ship. Gaz., March 8, 1907	294
"Chancellor," 4 Bened. 153	359
Chandler v. Blogg, (1898) 1 Q. B. 32; 67 L. J. Q. B. 336; 77 L. T. 524; 8 Asp. M. C. 349	252
"Chanonry" (1873), 42 L. J. Ad. 58; 28 L. T. 284; 1 Asp. M. C. 569	417
Chapman v. Royal Netherlands Steam Navigation Co. ("Savernake") (1879), 4 P. D. 157; 40 L. T. 433; 48 L. J. Ch. 449; 27 W. R. 554; 4 Asp. M. C. 107	142, 148, 152, 175
"Charkieh" (1873), L. R. 4 A. & E. 120; 42 L. J. Ad. 70; 29 L. T. 404; 22 W. R. 63; 2 Asp. M. C. 121	220, 276, 277
— (1873), L. R. 4 A. & E. 59; 42 L. J. Ad. 17; 28 L. T. 513; 1 Asp. M. C. 581; L. R. 8 Q. B. 197	231
"Charles Allen," 11 Fed. Rep. 317	153, 218
"Charles Amelia" (1867), L. R. 2 A. & E. 330; 38 L. J. Ad. 17; 19 L. T. 429; 17 W. R. 624	89
"Charles E. Soper," 19 Fed. Rep. 844	262
"Charlotte," (1908) P. 206; 99 L. T. 380; 77 L. J. P. 132	113
"Charlotte Raab," Brown, Ad. 453	376, 445, 470, 471
"Charlotte Webb," 43 Fed. Rep. 151	358
"Charming Nancy" and "The Dawkins" (1771) (not reported)...	220
Chartered Mercantile Bank of London, India and China v. Nether- lands India Steam Navigation Co. (1883), 10 Q. B. D. 521; 52 L. J. Q. B. 220; 48 L. T. 516; 5 Asp. M. C. 65—C. A.	108, 111, 134, 142, 152, 154, 180, 222, 223, 224, 225, 230, 245, 247, 248
"Chase," Stuart's Vice-Ad. Rep. Lower Canada (1875), 361	92
Chasteauneuf v. Delange (1882), 7 App. Cas. 127; 51 L. J. P. C. 37; 46 L. T. 65; 4 Asp. M. C. 489—P. C.	78
"Chatham," (1907) Fo. 460; Ad. Ct., October 26, 1908	293
"Chattahoochee," 173 U. S. Rep. 540	37, 363
"Chauncey M. Depew," 59 Fed. Rep. 791	44
"Cherokee," 15 Fed. Rep. 119	474
"Cheruskia," 92 Fed. Rep. 683	358
"Cheshire Witch" (1864), Br. & Lush. 362; 11 L. T. 350	279
"Chicago," 71 Fed. Rep. 537	475
"Chickasaw," 41 Fed. Rep. 627	24, 80
"Chieftain" (1864), Br. & Lush. 104; 9 Jur. N. S. 388; 32 L. J. Ad. 106; 8 L. T. 120; 11 W. R. 537	93, 95

TABLE OF CASES.

xxiii

	PAGE
"City of Mecca" (1880), 5 P. D. 28; 41 L. T. 444; 28 W. R. 260; 49 L. J. Ad. 17; on app. 6 P. D. 106; 50 L. J. Ad. 53; 44 L. T. 750; 4 Asp. M. C. 412	235
20 Fed. Rep. 159	474
See Smith, <i>In re</i> .	
"City of New York" (speed), 35 Fed. Rep. 604	358
(master), 25 Fed. Rep. 149	115
(tug and tow), 54 Fed. Rep. 181	208
"City of Paris," 14 Blatchf. 531	468
1 Bened. 174; 9 Wall. 634	12, 413, 421
"City of Peking" (1888) (No. 1) (eddy tide), 14 App. Cas. 40; 58 L. J. Ad. 64; 61 L. T. 136; 6 Asp. M. C. 396—P. C. ...	22, 24, 42, 462, 465, 475
(No. 2) (1890) (appeal; reference), 15 App. Cas. 438; 59 L. J. P. C. 88; 63 L. T. 722; 39 W. R. 177; 6 Asp. M. C. 572	128
"City of Philadelphia" v. Gavagnin, 62 Fed. Rep. 617	214, 476
"City of Rome" (1890), 8 Asp. M. C. 542	120
"City of Seattle," 9 Canad. Exchq. Rep. 146	343
"City of Springfield," 26 Fed. Rep. 158	428
"City of Truro," 35 Fed. Rep. 317	47
"City of Washington," 2 Otto, 31	75, 333, 477
"Civiltà" and "Restless," 13 Otto, 699	193, 201
"Clan Cumming," (1907) P. 311; 97 L. T. 14; 77 L. J. P. 1; 10 Asp. M. C. 436	528
"Clan Sinclair." See "Margaret."	
Clancy v. Harrison, 4 Victoria L. R. 437	76
"Clara," 55 Fed. Rep. 1021	31
(cause of collision), 49 Fed. Rep. 765	8
12 Otto, 200	43, 46
(lien) (1855), Swab. I. ...	94
"Clara Davidson," 24 Fed. Rep. 763	397
"Clara Killam" (1870), L. R. 3 A. & E. 161; 39 L. J. Ad. 50; 23 L. T. 27; 19 W. R. 25	92
2 Quebec L. R. 56	75
"Clarence" (damages) (1854), 1 Sp. 206	270
(port tack) (1850), 3 W. Rob. 283	117, 119, 128, 131, 132
Claridge v. Staffordshire Tramways Co., (1892) 1 Q. B. 422	113
"Clarion," 27 Fed. Rep. 128	454
"Clarita" and "Clara," 23 Wall. 1	102, 211, 262, 466
Clark v. Chambers (1878), 3 Q. B. D. 327	28
Clarke v. Beck, Seld. Ser. Admiralty, II. lxxxiii.	159
Clayards v. Dethick (1884), 12 Q. B. D. 439	12
"Cleadon" (1860), 14 Moo. P. C. 92; Lush. 158; 4 L. T. 157; 1 Mar. Law Cas. O. S. 41	15, 193
See "Creadon."	
"Clement," 1 Sprague, 257; 2 Curtis, 363	418
"Cleopatra" (1856), Swab. 135	305, 378, 379, 381
Cleveland R. R. v. Steamship Co., 208 U. S. Rep. 316	93
"Clieveden," (1894) A. C. 625; 64 L. J. P. C. 22; 71 L. T. 101; 7 Asp. M. C. 489—P. C.	422, 431

	PAGE
"Clutha" (1876), 45 L. J. Ad. 108; 35 L. T. 36; 3 Asp. M. C. 225...	191, 283
"Clutha Boat 147," (1909) P. 36; 100 L. T. 198; 78 L. J. P. 41; 11 Asp. M. C. 199	344, 424, 539
"Clydach" (1884), 51 L. T. 668; 5 Asp. M. C. 336	422
"Clyde" (1857), Swab. 23	118, 119, 120
Clyde Navigation Co. v. Barelay (1876), 1 App. Cas. 790; 36 L. T. 379; 3 Asp. M. C. 390—H. L.	46, 455, 459
Clyde Navigation Trustees v. Wilhelmsen (1915), S. C. 392—Ct. of Sess.	423, 513
Clyde S. S. Co., <i>In re</i> , 134 Fed. Rep. 95	358
"Cockatrice," (1908) P. 182; 98 L. T. 728; 77 L. J. P. 74; 11 Asp. M. C. 50	338
"Coe F. Young," 49 Fed. Rep. 167	397
Coey v. Smith (1860), 22 Ct. of Sess. Cas. 2nd ser. 955	254
"Coleman" and "Foster," Brown, Ad. 456	211
"Colgarth," Ship. Gaz., Nov. 3rd, 1906	450
"Collier" (1866), L. R. 1 A. & E. 83; 12 Jur. N. S. 789	99
"Collingrove" (1885), 10 P. D. 158; 54 L. J. Ad. 78; 53 L. T. 681; 34 W. R. 156; 5 Asp. M. C. 483	279
"Cologne" and "Ranger," Malcolmson v. General Steam Nav. Co. (1872), L. R. 4 P. C. 519; 9 Moo. P. C. N. S. 352; 27 L. T. 769; 21 W. R. 273; 1 Asp. M. C. 484	297, 384, 392, 428
"Colonia" (1844), 3 Not. of Cas. 13, note	306
"Colorado," 1 Otto, 692	362, 363
— 59 Fed. Rep. 300	386
"Colstrop," Ship. Gaz., Oct. 24th, 1908	441
Colthurst c. Sandall, Seld. Ser. Admiralty, II. lxxxiii.	159
"Columbia" (swell), 61 Fed. Rep. 220	481
— (pilot boat), 27 Fed. Rep. 704	333
— (flare), 27 Fed. Rep. 238	345
— 10 Wall. 246	379
"Columbian," 100 Fed. Rep. 991	373
"Columbus" (1848), 1 Pritch. Ad. Dig. 3rd ed. 239	42
— (1848), 2 Mar. Law Cas. O. S. Dig. 730	472
— (ferry), Abbot, Ad. 384	468
— (damages) (1849), 3 W. Rob. 158.....	118, 119, 120, 124, 130, 132
"Comet" and "Silver Spray," 9 Blatchf. 323; 22 L. T. 732	457
"Commerce" (1850), 3 W. Rob. 287	12, 438, 442
— 16 Wall. 33	397
"Commodore Jones," 25 Fed. Rep. 506	444, 471
"Comus" (1816), 2 Dods. 464	109, 280
Concha v. Concha (1886), 11 App. Cas. 541; 56 L. J. Ch. 257; 55 L. T. 522; 35 W. R. 477	234
"Concordia" and "Esther" (1866), L. R. 1 A. & E. 93; 12 Jur. N. S. 771; 14 L. T. 896	15, 49, 299, 443, 445, 446
"Condor" and "Swansea." See "Swansea."	
"Conoho," 24 Fed. Rep. 758	50
Conolly v. Ross, 11 Fed. Rep. 342	217
"Conqueror," 166 U. S. Rep. 110	130

	PAGE
"Consett" (damages) (1880), 5 P. D. 229; 5 Asp. M. C. 34, n. ...	130
— (costs) (1880), 5 P. D. 52, 77; 49 L. J. Ad. 24; 42 L. T. 33; 28 W. R. 622; 4 Asp. M. C. 230	292, 293
"Constantia" (1889), 62 L. T. 236; 6 Asp. M. C. 478; 38 W. R. 272	353
"Constantine" (1879), 4 P. D. 156; 27 W. R. 747—C. A.	294
"Constitution" (end on) (1864), 2 Moo. P. C. N. S. 453; 10 Jur. N. S. 831; 10 L. T. 894	375, 382
— (foreign ship; salvage) (1879), 4 P. D. 39; 48 L. J. Ad. 13; 40 L. T. 219; 27 W. R. 739; 4 Asp. M. C. 79	230, 231
"Continental," 14 Wall. 345	75
"Coogee," Vict. L. R. xxix. 874	352, 433
Coombs v. Duncan, 1 Fed. Rep. 733	153
Cooper v. Breeze, Seld. Ser. Admiralty, II. lxxxiv.	161
Cope v. Doherty (1857), 4 K. & J. 367; 6 W. R. 537; 31 L. T. 173; on app. 2 De G. & J. 614; 4 Jur. N. S. 699; 27 L. J. Ch. 600; 6 W. R. 695; 31 L. T. 307	170, 228, 229
"Cordilleras," (1904) P. 90; 89 L. T. 673; 73 L. J. P. 13; 9 Asp. M. C. 506	189
"Corennie" (narrow channel), (1894) P. 338, note	422
"Corinthian," (1909) P. 260; 101 L. T. 265; 78 L. J. P. 121 ..	59, 452
Cornwallis v. Noden, Seld. Ser. Admiralty, II. lxxxiv.	161
"Corsica," 9 Wall. 630	309, 395, 398, 413, 445
Cory & Son, Ltd. v. France, Fenwick & Co., (1911) 1 K. B. 114; 80 L. J. K. B. 341; 103 L. T. 649; 11 Asp. M. C. 499; 55 S. J. 10; 27 T. L. R. 18—C. A.	116
— v. Kopajtic (1908), S. C. 295; 45 Sc. L. R. 216; 15 Scots L. T. 558	327
"Cosmopolitan" (1874), 9 P. D. 35, n.; 5 Asp. M. C. 212, n.	277
"Counsellor," (1913) P. 70; 82 L. J. P. 72	356, 357
Coupé Co. v. Maddick, (1891) 2 Q. B. 413; 60 L. J. Q. B. 676; 65 L. T. 489	85
Couper v. Mackenzie (1906), 8 F. 1202	179
"Courier" (jurisdiction) (1862), Lush. 541	220, 221
"Coxon" (1849), 2 Mar. Law Cas. O. S. Dig. 549	477
"Craighall," (1910) P. 207; 103 L. T. 236	267
Crandley v. Porteer, Seld. Ser. Admiralty, II. lxxxiv.	161
"Crathie," (1897) P. 178; 66 L. J. Ad. 93; 76 L. T. 534; 45 W. R. 631; 8 Asp. M. C. 256	187, 191
Crawford v. Granite City S.S. Co. (1906), 43 Sc. L. R. 732 ..	354, 409
"Creadon" (1886), 54 L. T. 880; 5 Asp. M. C. 585	17, 185, 295
Creame v. Yaxley, Seld. Ser. Admiralty, II. lxxxiv.	160
"Crescent" and "Rowland Hill," Stuart's Vice-Ad. Rep. Lower Canada (Lond. 1858), 289	478
"Cricket" and "Endeavour" (1882), 48 L. T. 535; 5 Asp. M. C. 53.	182
"Crimdon," (1900) P. 171; 69 L. J. Ad. 103; 82 L. T. 660; 48 W. R. 623; 9 Asp. M. C. 104	280
Croft v. Alison (1820), 4 B. & Ald. 590	79
Cruse v. Wynn, Seld. Ser. Admiralty, II. lxxxiii.	159

	PAGE
"Crystal," (1894) A. C. 508; 63 L. J. Ad. 146; 71 L. T. 346; 7 Asp. M. C. 513—P. C.	98, 108, 106, 125, 188, 265
<i>Cuba v. McMillan</i> , 26 Sup. Ct. Canada, 651	423, 424
<i>Culbertson v. Shaw</i> , 18 How. 584	344, 460
"Cumberland" (1862), 5 L. T. 496	113, 275
——— Stuart's Vice-Ad. Rep. Lower Canada (Lond. 1858), 75	461
<i>Cunningham's case</i> , Bell's C. C. 220	262
"Curran," (1910) P. 184; 79 L. J. (P.) 83; 102 L. T. 640—C.A.	21, 49, 353
<i>Cushing v. Owners of "John Fraser."</i> See "James Grey."	
<i>Cuthbertson v. Parsons</i> (1852), 12 C. B. 304; 21 L. J. C. P. 165 ...	84
"Cybele" (1877), 2 P. D. 224; 47 L. J. Ad. 13; on app. 3 P. D. 8; 47 L. J. Ad. 86; 37 L. T. 773; 26 W. R. 345; 3 Asp. M. C. 352 —C. A.	109, 346
——— 5 Québec, L. R. 262	340
"Cynthia" (1877), 2 P. D. 52; 46 L. J. Ad. 58; 36 L. T. 184; 8 Asp. M. C. 378	105, 243
"Czar," 19 Lower Canada Jurist, 197	92

D.

"D. S. Gregory," 6 Blatchf. 528	467, 468
"D. S. Miller," 76 Fed. Rep. 877	42
"Dalhousie" (1875), 1 P. D. 271 n.	346
"Dallington," (1903) P. 77	241
<i>Dalton v. Angus</i> (1880), 6 App. Cas. 740; 50 L. J. Q. B. 689; 44 L. T. 844; 30 W. R. 191	83
——— <i>v. Denton</i> (1857), 1 O. B. N. S. 672	43, 44
<i>Dalyell v. Tyrer</i> (1858), E. B. & E. 899; 28 L. J. Q. B. 52	80
<i>Daniel v. Metropolitan Rail. Co.</i> , L. R. 3 C. P. 216, 591; L. R. 5 H. L. 45; 40 L. J. C. P. 121; 24 L. T. 815—H. L.	41, 45
"Dantzic" (1863), Br. & L. 102; 32 L. J. Ad. 164; 9 L. T. 236... ..	251
<i>Darrell v. Tibbits</i> (1880), 5 Q. B. D. 560; 50 L. J. Q. B. 33; 42 L. T. 797; 29 W. R. 66	257
"Dauntless," 116 Fed. Rep. 543	124
"David Dows," 16 Fed. Rep. 154	153
"David Morris," Brown, Ad. 273	13
<i>Davidson v. Burnand</i> (1869), L. R. 4 C. P. 117; 38 L. J. C. P. 73; 19 L. T. 782; 17 W. R. 121—Ex. Ch.	252
<i>Davidson v. Hill</i> , (1901) 2 K. B. 606; 70 L. J. K. B. 788; 85 L. T. 118; 9 Asp. M. C. 223	232
<i>Davies v. Davies</i> (1840), 9 C. & P. 252	271
<i>Davies v. Mann</i> (1842), 10 M. & W. 546; 12 L. J. Ex. 10; 6 Jur. 954	30, 31, 33—35

TABLE OF CASES.

xxvii

	PAGE
<i>Davis v. Saunders</i> (1822), 2 Chit. Rep. 639	3
<i>Davis v. Garrett</i> (1830), 6 Bing. 716; 8 L. J. C. P. (O. S.) 253; 4 Moo. & P. 540	249
"Daylesford," 30 Fed. Rep. 633	31
<i>De Lovio v. Boit</i> , 2 Gall. 398	88, 221
<i>De Vaux v. Salvador</i> (1835), 4 Ad. & El. 420; 6 N. & M. 713; 5 L. J. K. B. 134	140, 251, 252
<i>Dean v. Richards</i> . See "Europa."	
<i>Deering & Sons v. Targett</i> , (1913) 1 K. B. 129; 82 L. J. K. B. 85; 107 L. T. 709; 12 Asp. M. C. 273; 15 S. J. 113; 29 T. L. R. 100... ..	183
<i>Delanoy v. Robson</i> (or Anon.) (1814), 5 Taunt. 605	257
"Delaware," 54 Davis, 459	394
"Delta" and "Erminia Foscolo" (1875), 1 P. D. 393; 45 L. J. Ad. 111; 35 L. T. 376; 25 W. R. 46; 3 Asp. M. C. 256	233, 234
"Demetrius" (1872), L. R. 3 A. & E. 523; 41 L. J. Ad. 69; 26 L. T. 324; 20 W. R. 761; 1 Asp. M. C. 250	134, 272, 275, 278
<i>Denison v. Seymour</i> , 9 Wendel, 9	76, 250
<i>Dennis v. Tovell</i> (1872), L. R. 8 Q. B. 10; 42 L. J. M. C. 33; 27 L. T. 482; 21 W. R. 170; 2 Asp. M. C. 402	83
"Desdemona" (1857), Swab. 158	93
"Despatch" (1860), Lush. 98; 14 Moo. P. C. 83; 3 L. T. 219... ..	19, 121, 269, 463, 465, 467
——— (speed) (1856), Swab. 138	357
"Dettingen" (1914), 30 T. L. R. 589	529
"Devonian," (1901) P. 221; 70 L. J. Ad. 66; 84 L. T. 675; 49 W. R. 665; 9 Asp. M. C. 179	69, 320, 324, 342, 525
——— (narrow channel), 110 Fed. Rep. 588	478
"Devonshire," (1912) A. C. 634; 81 L. J. P. 94; 107 L. T. 179; 12 Asp. M. C. 210; 57 S. J. 10; 28 T. L. R. 551—II. L. (E.)... ..	18, 154, 193, 197, 199, 200
"Devonshire" and "St. Winifred," (1913) P. 13; 82 L. J. P. 61; 108 L. T. 427; 12 Asp. M. C. 314; 29 T. L. R. 86	207
"Diamond," (1906) P. 282; 25 L. J. P. 90; 95 L. T. 550; 10 Asp. M. C. 286	181
"Diana" (1874) (salvage), 31 L. T. 203; 2 Asp. M. C. 366.....	25, 127, 263, 454
——— (pilot) (1840), 1 W. Rob. 131; nom. <i>Stuart v. Isemonger</i> , 4 Moo. P. C. 11	97
——— (jurisdiction) (1862), Lush. 539; 9 Jur. N. S. 26; 32 L. J. Ad. 57; 7 L. T. 397; 11 W. R. 189	220, 221
——— and "Clieveden." See "Clieveden."	
"Dictator" (No. 1) (amendment of writ), (1892) P. 64; 61 L. J. Ad. 72; 66 L. T. 863; 7 Asp. M. C. 175	278
"Dictator" (bail), (1892) P. 304; 61 L. J. Ad. 73; 67 L. T. 563; 7 Asp. M. C. 251	95, 96, 278
<i>Dimes v. Petley</i> (1885), 15 Q. B. 276; 14 Jur. 113; 19 L. J. Q. B. 449	103
"Dimitri Donskoi," 60 Fed. Rep. 111	344
"Dione" (1886); 52 L. T. 61; 5 Asp. M. C. 347	189

	PAGE
Dixon v. Sadler (1839), 5 M. & W. 405; on app. 8 M. & W. 895; 11 L. J. Ex. 435	252
Dobree v. Schroeder (1833), 2 My. & Cr. 489	175
"Dolphin" and "Barbados Merchant" (1664). See Martin v. Green	220
Don v. Lippmann (1837), 5 Cl. & Fin. 1	219
Donnell v. Boston Towboat Co., 89 Fed. Rep. 757	410, 423
Doolan v. Midland Rail. Co. (1877), 2 App. Cas. 792; 37 L. T. 317; 25 W. R. 882; 3 Asp. M. C. 485	182
"Dordogne" (1884), 10 P. D. 6; 54 L. J. Ad. 29; 51 L. T. 650; 33 W. R. 360; 5 Asp. M. C. 328 14, 304, 355, 357, 360, 361, 363, 364, 401, 402, 405, 410, 412	
"Doris Eckhoff," 50 Fed. Rep. 134	212
..... 41 Fed. Rep. 156	153
Dormont v. Furness Rail. Co. (1883), 11 Q. B. D. 496; 52 L. J. Q. B. 331; 49 L. T. 134; 5 Asp. M. C. 127	106, 315
Dorrington's Case (1616), Sir Fr. Moore, 916	220
Dorvill c. Tresaur, Seld. Ser. Admiralty, II. lxxxiv.	161
"Douglas" (1882), 4 Asp. M. C. 510; 46 L. T. 488; 51 L. J. Ad. 55; 30 W. R. 692; on app. 7 P. D. 151; 51 L. J. Ad. 89; 47 L. T. 502; 5 Asp. M. C. 15	17, 68, 103, 106, 185, 114
"Douglass," Brown, Ad. 105	457
Dowell v. General Steam Navigation Co. (1855), 5 E. & B. 195; 26 L. J. Q. B. 59; 1 Jur. N. S. 800; 3 W. R. 492 33, 34, 75, 412	
"Dowse" (1870), 39 L. J. Adm. 46; L. R. 3 A. & E. 135; 22 L. T. 627; 18 W. R. 1008	288
"Druid" (1842), 1 W. Rob. 391	79, 87, 97, 99
"Drumlanrig," (1910) P. 249; (1911) App. Cas. 16; 80 L. J. P. 9; 103 L. T. 773; 27 T. L. R. 146; 55 Sol. J. 138; 11 Asp. M. C. 520...140, 141, 148	
Duane v. Steam tug "Emma J. Kennedy," 5 Fed. Rep. 206.....	474
Dublin, Wicklow, and Wexford Rail. Co. v. Slattery (1878), 3 App. Cas. 1155; 39 L. T. 365; 27 W. R. 191	36, 46
"Duc d'Aumale," (1903) P. 18	266
"Duchesse de Brabant" (1856), Swab. 264; 6 W. R. 329	95
Duckham v. Gibbs, (1900) 1 Q. B. 394; 69 L. J. Q. B. 127; 48 W. R. 239	546
Dudgeon v. Pembroke (1877), L. R. 9 Q. B. 581; 2 App. Cas. 284; 46 L. J. Q. B. 409; 36 L. T. 382; 25 W. R. 499; 3 Asp. M. C. 393—H. L.	252
Dudman and Brown v. Dublin Port and Docks Board (1873), Ir. Rep. 7 C. L. 518	108
"Due Checchi" (1872), L. R. 4 A. & E. 35, n.; 26 L. T. 593; 20 W. R. 686; 1 Asp. M. C. 294	270
"Duke of Buccleugh" (regulations) (1889), 15 P. D. 86; affirmed (1891) App. Cas. 310; 65 L. T. 422; 7 Asp. M. C. 68—H. L....59, 60, 316, 321	
..... (substituting plaintiff), (1892) P. 201; 61 L. J. Ad. 57; 40 W. R. 455; 7 Asp. M. C. 294—C. A.	276

TABLE OF CASES.

xxix

	PAGE
"Duke of Cambridge" (1874), L. R. 5 P. C. 451	239
"Duke of Cornwall" (1862), 1 Pr. Ad. Dig., 3rd ed. 201	467, 481
"Duke of Manchester" (1846), 10 Jur. 863; 2 W. Rob. 470; 4 Not. of Cas. 575; on app. nom. <i>Shersby v. Hibbert</i> , 6 Moo. P. C. 90; 5 Not. of Cas. 470	202, 206
"Duke of Sussex" (1841) (pilot; tug), 1 Not. of Cas. 161; 1 W. Rob. 270	201
————— (1841) (navigation), 1 W. Rob. 274; 1 Not. of Cas. 165	6, 10, 54, 297, 305, 421, 428
"Duke of Sutherland." See "Magnet."	
"Dumfries" (1856), Swab. 63; on app. <i>ibid.</i> 125; 10 Moo. P. C. 461	223, 226, 305
"Duna" (1861), 5 L. T. 217; 1 Mar. L. C. (O. S.) 159	93
"Dundee" (1823) (limitation; year), 1 Hag. Ad. 109	4, 82, 90, 102, 170, 174, 175, 223, 279
————— (interest; costs) (1830), 2 Hag. Ad. 137	187
"Dunelm" (1884), 9 P. D. 164; 32 W. R. 970; 53 L. J. Ad. 81; 51 L. T. 214; 5 Asp. M. C. 304	303, 338, 343
"Dunlossit," <i>Currie v. McKnight</i> , (1897) App. Cas. 97; 66 L. J. P. C. 19; 75 L. T. 457; 8 Asp. M. C. 193—H. L.	80, 89, 90, 92, 98
<i>Dunn v. Bucknall Bros.</i> , (1902) 2 K. B. 614; 87 L. T. 497; 71 L. J. K. B. 963; 9 Asp. M. C. 336; 8 Com. Cas. 33	133
"Dunstanborough," (1892) P. 363, n.	27, 37, 146, 456, 458, 543
"Duplex," (1912) P. 8; 81 L. J. P. 9; 116 L. T. 347; 12 Asp. M. C. 122; 27 T. L. R. 577	1, 88, 95, 171, 278
"Dura" (1853), 1 Pritch. A. Dig. 174; 5 Ir. Jur. N. S. 384	459
"Dutchess," 6 Bened. 48	464
"Dwina," (1892) P. 58; 61 L. J. Ad. 71; 66 L. T. 862; 7 Asp. M. C. 173	263

E.

"E. A. Packer," 49 Fed. Rep. 92	217
"E. E. Simpson," 60 Fed. Rep. 452	216
"Earl of Dumfries," "Boskenna Bay" and (fog) (1885), 5 Asp. M. C. 329, n.	354, 365
"Earl Grey" (1853), 1 Sp. 180	296
"Earl Spencer" (1875), L. R. 4 A. & E. 431; 32 L. T. 370; 23 W. R. 661; 2 Asp. M. C. 523; affd. 33 L. T. 235; 3 Asp. M. C. 4	274, 340, 455, 462
"Earl Wemyss" (1889), 61 L. T. 289; 6 Asp. M. C. 407—C. A.	10, 368, 369, 370, 372, 395
"East Lothian" (1861), Lush. 241; 14 Moo. P. C. 177; 4 L. T. 487	269, 270
"Ebenezer" (1843), 2 W. Rob. 206	269, 363
"Ebor" (1885), cited <i>Williams & Bruce</i> , ed. 3, 98	290
———— (1886), 11 P. D. 25; 54 L. T. 200; 34 W. R. 448; 5 Asp. M. C. 560—C. A.	304, 357, 361, 408, 410

	PAGE
"Echo," 7 Bened. 70	203
— 19 Fed. Rep. 453	474
— (1917) P. 132; 86 L. J. P. 121; 117 L. T. 345	391
"Eclipse" and "Saxonia." See "Saxonia."	
"Economy" (1855), 1 Pritch. Ad. Dig. (3rd ed.) 286	243
"Ecossaise," Ship. Gaz., Dec. 15th, 1885	426
"Eden," (1846), 2 W. Rob. 442; 10 Jur. 296	236
"Edgewater," 65 Fed. Rep. 527	31
"Edith" (1876), Ir. Rep. 10 Eq. 345	338
Edwards, Robertson & Co. v. Falmouth Harbour Commissioners. See "Rhosina."	
"Edwin Hawley," 41 Fed. Rep. 606	24, 105, 204
"Effort" (1847), 5 Not. of Cas. 279	478
"Egerateia" (1869), 38 L. J. Ad. 40; 20 T. T. 961	280
Eglington, Earl v. Norman (1877), 46 L. J. Ex. 557; 36 L. T. 888; 25 W. R. 656; 3 Asp. M. C. 471—C. A.	98, 103, 257
"Egyptian" (1863), 1 Mar. Law Cas. O. S. 368; on app. 1 Moo. P. C. N. S. 373; 9 Jur. N. S. 1159; 8 L. T. 776	461, 462
— (damages) (1864), 2 Mar. Law Cas. O. S. 56; 10 L. T. 910	126
— (1910) P. 38; 79 L. J. P. 57; (1910) App. Cas. 400; 102 L. T. 465; 11 Asp. M. C. 388	28, 123
"Eleanor" and "Alma" (1865), 2 Mar. Law Cas. O. S. 240..42, 372, 373, 419, 469	
"Electra," 1 Bened. 282	351
— 6 Bened. 189	23
"Eleonora," 17 Blatchf. 88	314
"Eleonore" (1863), Br. & L. 185; 33 L. J. Ad. 19; 9 L. T. 397; 12 W. R. 218	296
"Elin" (1883), 8 P. D. 39; 54 L. J. Ad. 77; on app. 8 P. D. 129; 52 L. J. Ad. 55; 49 L. T. 87; 31 W. R. 736; 5 Asp. M. C. 120— C. A.	93
"Elina" (1880), 5 P. D. 237, n.	124
"Eliza" and "Orinoco" (1864), Holt, 98	73, 436
"Eliza Jane" (1837), 3 Hag. 335	221
"Eliza Keith" and "Langshaw," 3 Quebec L. R. 143	59, 153
"Elizabeth" (1860), 3 L. T. 159	226
— and "Adalia" (1870), 22 L. T. 74; 3 Mar. Law Cas. O. S. 345	13
"Elizabeth Jones," 5 Dav. 514	13, 395
"Ellen S. Terry," 7 Bened. 401	478
Ellerman Lines v. Clyde Navigation Trustees (1911), S. C. 122— Ct. of Sess.	466
Elmore v. Hunter (1877), 3 C. P. D. 116; 47 L. J. M. C. 8; 38 L. T. 179; 3 Asp. M. C. 555	546
"Elswick Park," (1904) P. 76; 9 Asp. M. C. 481	489
Elwill o. Wiggett (1664) (not reported)	221
"Elysia" (1882), 46 L. T. 840; 4 Asp. M. C. 540	355, 363
Emery v. Huntington, 12 Amer. Rep. 725	260
"Emily B. Maxwell," 96 Fed. Rep. 999	370

TABLE OF CASES.

xxx

	PAGE
"Emma" (1850), 2 W. Rob. 315	271
"Emma Kate Ross," 50 Fed. Rep. 845	129
"Emmy Haase" (1884), 9 P. D. 81; 53 L. J. Ad. 43; 50 L. T. 372; 32 W. R. 880; 5 Asp. M. C. 216	14, 61, 68, 74, 410, 411
"Emperor," 46 Fed. Rep. 143	49
— and "Lady of the Lake" (1864), Holt, 37, 202	321, 322
— and "Zephyr" (1864), 12 W. R. 890	271
"Empire State," Whitney v. "Empire State," 1 Bened. 57.....	369, 397, 470, 471
"Empress of Britain" (1913), 29 T. L. R. 423	119
"Empress Eugénie" (1860), Lush. 138	125, 127
"Empusa" (1879), 5 P. D. 6; 48 L. J. Ad. 36; 41 L. T. 383; 28 W. R. 263; 4 Asp. M. C. 185	181, 192, 283, 295
"Endeavour." See "Cricket."	
— (No. 2, damages) (1889), 62 L. T. 840; 6 Asp. M. C. 511	118
"Energia," 56 Fed. Rep. 124	398
— 66 Fed. Rep. 604	131
"Energy," 42 Fed. Rep. 301	60, 352
— (1871), L. R. 3 A. & E. 48; 39 L. J. Ad. 25; 23 L. T. 601; 18 W. R. 1009	38, 202, 203, 204, 206, 210, 218
"Engineer," Tatham v. Burr, (1898) App. Cas. 382; 67 L. J. Ad. 61; 78 L. T. 473; 8 Asp. M. C. 401—H. L.	125, 254
"England" (1847), 5 Not. of Cas. 170	268, 269
Englehart v. Farrant, (1897) 1 Q. B. 240	28
"Englishman" (lights) (1878), 3 P. D. 18; 47 L. J. Ad. 9; 37 L. T. 412; 3 Asp. M. C. 506	60, 74, 338
— and "Australia" (No. 1, tug and tow), (1894) P. 239; 63 L. J. Ad. 133; 70 L. T. 846; 43 W. R. 62; 6 R. 743; 7 Asp. M. C. 603	147, 154, 185, 196, 208, 211, 218
— (No. 2, assignment of judgment), (1895) P. 212; 64 L. J. Ad. 74; 72 L. T. 203; 43 W. R. 670; 7 Asp. M. C. 605	154
"Enrique, Stockton," V. Ad. Dig. Canada, 157	133
"Enterprise," (1912) P. 207	69, 70
"Eolides" (1832), 3 Hag. Ad. 367	123
"Erandio," 163 Fed. Rep. 435	24
"Erastus Corning," 25 Fed. Rep. 572	454, 455
"Erastus Wiman," 20 Fed. Rep. 245	47
"Ericsson" (1856), Swab. 38	305, 306
"Esk" and "Gitana" (1869), L. R. 2 A. & E. 350; 38 L. J. Ad. 33; 20 L. T. 587; 17 W. R. 1064	319, 342, 343, 344
— and "Niord" (1870), L. R. 3 C. P. 436; 7 Moo. P. C. N. S. 276; 24 L. T. 167; 1 Asp. M. C. 1	307, 384, 392, 427, 428
"Essequibo" (1888), 13 P. D. 51; 57 L. J. Ad. 29; 58 L. T. 596; 6 Asp. M. C. 276	339, 340
"Etna," (1908) P. 269; 98 L. T. 424; 77 L. J. P. 138; 11 Asp. M. C. 30	439, 440, 441
"Etruria," 88 Fed. Rep. 555	484

	PAGE
"Ettrick," <i>Prehn v. Bailey</i> (1881), 6 P. D. 127; 44 L. T. 817; 4 Asp. M. C. 465; on app. 45 L. T. 399; affirming, 50 L. J. Ad. 65	175, 188, 260, 262, 264, 265
"Europa" (fog) (1850), 14 Jur. 627	18, 355, 459
— (evidence) (1849), 13 Jur. 856	272
— (lien), <i>Dean v. Richards</i> (1864), Br. & Lush. 89; 2 Moo. P. C. N. S. 1; 32 L. J. Ad. 188; 9 Jur. N. S. 699; 8 L. T. 368...	89
— (marshal's charges) (1864), Br. & L. 210; 9 L. T. 781...	89
— (bill of lading), (1908) P. 84; 98 L. T. 246; 77 L. J. P. 26; 11 Asp. M. C. 19	247
"European" (1885), 10 P. D. 99; 54 L. J. Ad. 61; 52 L. T. 868; 33 W. R. 937; 5 Asp. M. C. 417	16
— (practice), <i>Williams & Bruce</i> , Adm. Pr. (3rd ed.) 354.	270
<i>European and Australian Royal Mail Co. v. Peninsular and Oriental Steam Nav. Co.</i> (1866), 12 Jur. N. S. 909; 14 L. T. 704; 14 W. R. 843	301
"Evangelismos," <i>Xenos v. Aldersley</i> (1858), Swab. 378; 12 Moo. P. C. 352	279, 280, 291
"Evangelistria" (1876), 2 P. D. 241, n.; 46 L. J. Ad. 1; 35 L. T. 410; 25 W. R. 255; 3 Asp. M. C. 264	220
<i>Everard v. Kendall</i> (1870), L. R. 5 C. P. 428; 39 L. J. C. P. 234; 22 L. T. 408; 18 W. R. 892	93, 178, 287, 328
<i>Ewer v. Ambrose</i> (1825), 4 B. & C. 25	271
"Excelsior" (1867), L. R. 2 A. & E. 268; 37 L. J. Ad. 54; 19 L. T. 87	92, 105, 106, 243, 458, 463, 464
— 39 Fed. Rep. 393	315
<i>Excelsior Co. v. Smith</i> (1860), 2 L. T. 90	254
"Exchange," 10 Blatchf. 168	366, 467
"Explorer" (1870), L. R. 3 A. & E. 289; 40 L. J. Ad. 41; 23 L. T. 604; 19 W. R. 166	232, 233
— 20 Fed. Rep. 135	154
"Express" (lights), 48 Fed. Rep. 323	344
— 52 Fed. Rep. 890	215, 218
"Ezardian," (1911) P. 92; 80 L. J. P. 81; 104 L. T. 400; 11 Asp. M. C. 602	428, 515

F.

"F. & P. M." (No. 1), 45 Fed. Rep. 703	42, 476
— (No. 2), 44 Fed. Rep. 698	428
"F. W. Wheeler," 78 Fed. Rep. 824	214
<i>Fabre v. Cunard Steamship Co.</i> , 53 Fed. Rep. 288	410
"Faedrelandet," (1895) P. 205; 64 L. J. Ad. 122; 72 L. T. 650; 8 Asp. M. C. 1	320, 327, 343
<i>Fairless v. Thorsen</i> . See "Good Intent"	221
"Fairy" (1855), 1 Sp. 298	56
"Falcon," 19 Wall. 75	12, 388

	PAGE
"Falk" (1881), 47 L. T. 308; 4 Asp. M. C. 592	95, 96, 275
"Falkland" and "Navigator" (1863), Br. & Lush. 204; 1 Moo. P. C. N. S. 379; 9 Jur. N. S. 1113; 9 L. T. 1	274, 420, 469
"Fancy," (1917) P. 13; 86 L. J. P. 38; 116 L. T. 224; 33 T. L. R. 153	384, 392, 393
"Fannie," 11 Wall. 238	458
"Fannie Tuthill," 17 Fed. Rep. 87	127
"Fanny M. Carvill" (1874), L. R. 4 A. & E. 417, 422; 44 L. J. Ad. 1; 23 W. R. 598; on app. 13 App. Cas. 455, n.; 44 L. J. Ad. 34; 32 L. T. 646; 24 W. R. 62; 2 Asp. M. C. 565	59, 74, 321
Fantley v. King, "John" and "Merry Rose" (1695)	162
"Farewell," 8 Quebec L. R. 87	193, 210, 396, 421
Farr v. "Farnley," 1 Fed. Rep. 631	47
"Farragut," 10 Wall. 334	75, 454
"Favorita," 18 Wall. 598	12, 473
Faye v. Graham, "Three Relations" and "Britannia," Marsd. Ad. Ca. 331, 26th March, 1788	165
"Fenham" (1870), L. R. 3 P. C. 212; 6 Moo. P. C. N. S. 501; 23 L. T. 329	9, 29, 31, 40, 50, 57, 59, 60, 71, 315
Fenton v. Dublin Steam Packet Co. (1838), 8 Ad. & El. 835; 1 P. & D. 103; 8 L. J. Q. B. 28	80, 199
Fenwick v. Bell (1844), 1 C. & K. 312	273
Ferguson v. Mahon (1839), 11 Ad. & El. 179	234
— and Hutchinson, <i>Ex parte</i> (1871), L. R. 6 Q. B. 280; 40 L. J. Q. B. 105; 24 L. T. 96; 19 W. R. 746; 1 Asp. M. C. 8	73, 74, 288, 301
"Fidelity," 16 Blatchf. 569	109
"Figlia Maggiore" (1868), L. R. 2 A. & E. 106; 37 L. J. Ad. 52; 18 L. T. 532	251
"Fire Queen" (1887), 12 P. D. 147; 56 L. J. Ad. 90; 57 L. T. 312; 36 W. R. 15; 6 Asp. M. C. 146	66, 321, 339, 525
Fisk v. City of New York, 119 Fed. Rep. 256	130
Flamigen v. Washington Insurance Co., 7 Barr. 306	242
Fletcher v. Braddick (1806), 2 Bos. & P. N. R. 182	80, 250
"Fletcher" and "Grapeshot," 42 Fed. Rep. 504	127
"Flint" (1848), 6 Not. of Cas. 271	445, 475
"Flora," Ad. Ct. 23th June, 1815	168
— (1866) (arrest of cargo), L. R. 1 A. & E. 45; 35 L. J. Ad. 15; 14 L. T. 192	90, 95
"Florence P. Hall," 14 Fed. Rep. 408	20, 46, 47
Flower v. Bradley (1875), 44 L. J. Ex. 1; 31 L. T. 702; 23 W. R. 74; 2 Asp. M. C. 489	277
"Flying Fish, H.M.S." (1864), Br. & Lush. 436; 3 Moo. P. C. N. S. 77; 34 L. J. Ad. 113; 2 Mar. Law Cas. O. S. 221	122, 125
Forbes v. Lee Conservancy Board (1879), 4 Ex. D. 116; 48 L. J. Q. B. 402; 27 W. R. 688	106
"Fork, H.M.S." (1864), 2 Pr. Ad. Dig. 3rd ed. 1761	131
"Fort Lee," 31 Fed. Rep. 570	44
Foscolino (1886), 52 L. T. 866; 5 Asp. M. C. 420	191, 282

	PAGE
"Foyle" (1860), Lush. 10	272
France, Fenwick & Co. v. Merchants' Marine Insurance Co., (1915) 3 K. B. 290; 84 L. J. K. B. 1905; 113 L. T. 299; 20 Com. Cas. 227; 31 T. L. R. 321	255
France v. Gaudet (1871), L. R. 6 Q. B. 199	132
"Francis," 44 Fed. Rep. 510	31
"Francis King," 7 Bened. 11	216
Franckes v. Dingslach (not reported)	162
"Franconia" (damages), 16 Fed. Rep. 149	124, 218
——— Harris v. Hamburg, &c. Gesellschaft, Owners of the F. (service of writ) (1876), 2 C. P. D. 173; 43 L. J. C. P. 333... ..	266
——— (overtaking ship) (1876), 2 P. D. 8; 35 L. T. 721; 25 W. R. 197; 3 Asp. M. C. 295—C. A. 80, 309, 379, 412, 416, 417, 418, 480	
——— (jurisdiction; loss of life) (1877), 2 P. D. 163; 45 L. J. Ad. 71; 36 L. T. 643; 25 W. R. 796; 3 Asp. M. C. 435—C. A. ...	280
——— (limitation), Hamburg, &c. Gesellschaft v. Burrell (1878), 38 L. T. 719; 26 W. R. 743; on app. 3 P. D. 164; 39 L. T. 57; 27 W. R. 218; 4 Asp. M. C. 1	189
——— (criminal jurisdiction). See Reg. v. Keyn. ——— 4 Bened. 181	362
"Frank," 2 Quebec L. R. 295	364
"Frank P. Lee," 34 Fed. Rep. 480	345
Frankfort, (1910) P. 50; 79 L. J. P. 43; 101 L. T. 664; 11 Asp. M. C. 326—C. A. 473, 515	
"Frankland" (1872), L. R. 3 A. & E. 511; 41 L. J. Ad. 3; 25 L. T. 889; 20 W. R. 592; 1 Asp. M. C. 207	268
——— and "Kestrel" (1872), 9 Moo. P. C. N. S. 365; L. R. 4 P. C. 529; 27 L. T. 633; 1 Asp. M. C. 439	145, 360, 410, 413
——— (1901) P. 161; 84 L. T. 395; 70 L. J. Ad. 42; 9 Asp. M. C. 196	111, 141, 146, 153
"Franz Sigel" (1861), 14 Blatchf. 430; 6 Bened. 550	475
Frayes v. Worms (1865), 10 C. B. N. S. 149	233
Frazer v. Cuthbertson (1881), 6 Q. B. D. 93; 50 L. J. Q. B. 277; 29 W. R. 396	78
"Fred" (1894), 72 L. T. 523; 7 Asp. M. C. 550	274
"Fred. Jansen," 49 Fed. Rep. 254	475
"Fred. W. Chase," 31 Fed. Rep. 91	194
"Free State," Brown, Ad. 251; 1 Otto, 200	303, 307, 412, 430
"Freedom" (1870), L. R. 3 A. & E. 495; 41 L. J. Ad. 1; 25 L. T. 392; 1 Asp. M. C. 136	95, 251, 279
Fretz v. Bull, 12 How. 466	480
"Friedeberg" (1885), 10 P. D. 112; 54 L. J. Ad. 75; 52 L. T. 837; 33 W. R. 687; 5 Asp. M. C. 423	292
"Friends" (1842), 1 W. Rob. 478; aff. 4 Moo. P. C. 314.....6, 10, 28, 143, 297, 428	
"Friends Goodwill" and "Peggy," Stoker v. Hutton, Marsd. Ad. Cas. 328	274
"Frostburg," 25 Fed. Rep. 451	124
"Fulda," 31 Fed. Rep. 351	7, 474
"Fyenoord" (1858), Swab. 374	227, 299, 426, 488

G.

	PAGE
Gadney v. Rough (1879), 40 L. T. 258; 4 Asp. M. C. 73	544
"Gaetano" and "Maria" (1882), 7 P. D. 1; 51 L. J. Ad. 7; 45 L. T. 510; 30 W. R. 108; on app. 7 P. D. 137; 51 L. J. Ad. 67; 46 L. T. 835; 30 W. R. 766; 4 Asp. M. C. 535—C. A.....	170
Gaffner v. Pigott, 116 Fed. Rep. 486	40, 418
"Gala" and "Zenobia" (1865), Holt, 112	386
"Galatea," 2 Otto, 439	211, 473
Gale v. Laurie (1826), 5 B. & O. 156; 7 D. & R. 711	170, 174, 175
"Gamma," 103 Fed. Rep. 703	38
"Ganges" (1880), 5 P. D. 247; 43 L. T. 12; 4 Asp. M. C. 317— C. A.	288
Gannet, (1900) App. Cas. 234; 69 L. J. Ad. 49; 82 L. T. 329; 9 Asp. M. C. 43	51, 66, 274, 315, 343
Gapp v. Bond (1887), 19 Q. B. D. 200; 56 L. J. Q. B. 438; 57 L. T. 437; 35 W. R. 688—C. A.	178, 328
Gardiner v. Bright, Seld. Ser. Admiralty, II. lxxxiii.	159
Garnett v. Bradley (1878), L. R. 3 App. Cas. 914	295
"Garston" Sailing Ship Co. v. Hickie (1887), 18 Q. B. D. 17; 56 L. J. Q. B. 38; 55 L. T. 879; 35 W. R. 33; 6 Asp. M. C. 71—C. A.	247
"Gas Float Whitton" (No. 2), (1897) App. Cas. 337; 66 L. J. P. 99; 76 L. T. 663	144, 178
"Gazelle" (1842) (customary track), 1 W. Rob. 471 ...6, 10, 274, 428 — (damages) (1844), 2 W. Rob. 279	118
"Geelong," Ship. Gaz., March 5th, 1908	361
"Gemma," (1899) P. 285; 68 L. J. Ad. 110; 81 L. T. 379; 8 Asp. M. C. 585—C. A.	96, 96, 278
"General," 82 Fed. Rep. 830	456
"General Birch," 6 Quebec L. R. 300	66
"General Gordon" (costs) (1887), 63 L. T. 117; 6 Asp. M. C. 533; on app. (1892) 68 L. T. 469; 7 Asp. M. C. 317	290, 373
— (sufficiency of crew) (1892), 68 L. T. 469; 7 Asp. M. C. 317	459
General Iron Screw Collier Co. v. Moss. See "Araxos." — v. Schurmanns (1860), 1 J. & H. 180; 29 L. J. Ch. 877; 6 Jur. N. S. 883; 4 L. T. 138; 8 W. R. 732	18, 228, 229
"General Lee," 32 Fed. Rep. 830	439
— (1869), 19 L. T. 750; 3 Mar. Law Cas. O. S. 204...390, 305, 413	
General Mutual Insurance Co. v. Sherwood, 14 How. 351	253
General Steam Navigation Co. v. British and Colonial Steam Navi- gation Co. (1868), L. R. 3 Ex. 330; 37 L. J. Ex. 194; 19 L. T. 357; 17 W. R. 615; on app. L. R. 4 Ex. 233; 33 L. J. Ex. 97; 20 L. T. 581; 17 W. R. 741—Ex. Ch.	237
— v. Gillou (1843), 11 M. & W. 877; 13 L. J. Ex. 168	225, 234

	PAGE
General Steam Navigation Co. v. London and Edinburgh Shipping Co. (1877), 2 Ex. Div. 467; 47 L. J. Q. B. 77; 36 L. T. 743; 25 W. R. 694; 3 Asp. M. C. 454	291
----- v. Mann (1853), 14 C. B. 127.....	306
----- v. Morrison. See Morrison v. &c.	
----- v. Tonkin. See "Friends."	
"General U. S. Grant," 6 Bened. 465	397
"General Wm. McCandless," 6 Bened. 223	475
"George" (pilot) (1845), 2 W. Rob. 386; 4 Not. of Cas. 161; 9 Jur. 670	365
----- and "Lidskjalf" (1856), Swab. 117	461
"George and Richard" (1871), L. R. 3 A. & E. 466; 24 L. T. 717; 20 W. R. 245; 1 Asp. M. C. 50	113, 121
"George Arkle" (1861), Lush. 382—P. C.	320, 328
"George Gordon" (1884), 9 P. D. 46; 53 L. J. Ad. 28; 50 L. T. 371; 32 W. R. 596; 5 Asp. M. C. 216	296
"George Law," 3 Bened. 396	476
"George Murray," 22 Fed. Rep. 117	454
"George Roper" (1883), 8 P. D. 119; 52 L. J. Ad. 69; 49 L. T. 185; 31 W. R. 953; 5 Asp. M. C. 134	4, 37, 482
"George W. Roby," 111 Fed. Rep. 601	130
Georgian Bay Transportation Co. v. Fisher, 5 Tupper (Ontario), 383	180
"Georgiana" and "Anglican" (1873), 21 W. R. 280	128
"Gere," (1909) P. 287; 100 L. T. 620; 78 L. J. P. 130	426
"Germania" (1868), 37 L. J. Ad. 59; 19 L. T. 20; 21 L. T. 44; 3 Mar. Law Cas. O. S. 269	273, 454
----- (1875), 1 Maude & Pollock on Sh. 4th ed. 606 n. (i)....,	299, 301
"Germanic," (1896) P. 84; 65 L. J. Ad. 53; 73 L. T. 730; 44 W. R. 394; 8 Asp. M. C. 116—C. A.	277
----- Ad. Ct. Feb. 1896	359
"Germany," 2 Stuart (V. Ad. Canada), 158	59
"Gertor" (1894), 70 L. T. 703; 7 Asp. M. C. 472 ...4, 16, 27, 132, 209	
"Gertrude" (1888), "The Baron Aberdare," 12 P. D. 204; 13 <i>ibid.</i> 105; 56 L. J. Ad. 106; 57 L. T. 883; 59 <i>ibid.</i> 251; 36 W. R. 191, 616; 6 Asp. M. C. 224, 315	120
"Gettysburg" (1886), 52 L. T. 60; 5 Asp. M. C. 347	90
"Gevalia," 39 Fed. Rep. 47	464, 467
Gilbert v. Corporation of Trinity House (1886), 17 Q. B. D. 795; 56 L. J. Q. B. 85; 35 W. R. 30	103
"Gilson," 35 Fed. Rep. 333	126
"Gipsy," 19 How. 56	344
"Gipsy King" (1847), 2 W. Rob. 537; 5 Not. of Cas. 282.....	27, 463
"Girolamo" (1833), 3 Hag. Ad. 169	97, 227, 229, 361
"Gjessing," and "Hansa." See "Hansa."	
"Gladiator," 79 Fed. Rep. 445	196, 212
Gladholm v. Barker (1866), L. R. 1 Ch. 223; 35 L. J. Ch. 259; 13 L. T. 653; 14 W. R. 296	186
"Gladys," (1910) P. 13; 79 L. J. P. 5; 101 L. T. 720; 11 Asp. M. C. 352; 26 T. L. R. 66	15, 320, 337, 338, 433

TABLE OF CASES.

xxxvii

	PAGE
"Glamorganshire" (1876), 13 App. Cas. 454; 59 L. T. 572; 6 Asp. M. O. 344—P. C.	66, 316
"Glannibanta" (1876), 1 P. D. 283; 46 L. J. Ad. 75; 34 L. T. 934; 24 W. R. 1033; 3 Asp. M. C. 233—C. A.	51, 294, 454
"Glasgow" (1856), Swab. 145; 12 Moo. P. C. 355 n.; 2 Jur. N. S. 1147; 5 W. R. 10	280
"Gleaner" (1876), 38 L. T. 650; 3 Asp. M. C. 582	131
"Glengaber" (1872), L. R. 3 A. & E. 534; 41 L. J. Ad. 84; 27 L. T. 386; 21 W. R. 168; 1 Asp. M. C. 401	262, 263
"Glengariff," (1905) P. 106; 93 L. T. 281; 74 L. J. P. 90; 10 Asp. M. C. 103	423, 424
"Glengarry" (1874), 2 P. D. 235 (note); 43 L. J. Ad. 37; 30 L. T. 341; 23 W. R. 110; 2 Asp. M. C. 230	482, 483
"Globe" (1848), 6 Not. of Cas. 275	476
Godard v. Gray (1871), L. R. 6 Q. B. 139; 40 L. J. Q. B. 62; 24 L. T. 89; 19 W. R. 348	234
"Godiva" (1886), 11 P. D. 20; 55 L. J. Ad. 13; 54 L. T. 55; 34 W. R. 551; 5 Asp. M. C. 524	268
Goldsmith v. Slattery (1890), 63 L. T. 273; 6 Asp. M. C. 561....	546
Good v. London Steamship Owners' Mutual Protecting Association (1871), L. R. 6 C. P. 563; 20 W. R. 33	186
"Good Intent" and "Prince Christian," Fairless v. Thorsen (1774), Marsd. Ad. Ca. 130	221
Goodyne c. Tompkins (not reported)	220
Gosling v. Newton, Gosling v. Eagers, (1895) 1 Q. B. 793; 64 L. J. (M. C.) 160; 72 L. T. 500; 59 J. P. 406; 43 W. Rob. 559; 15 R. 395; 18 Cox C. C. 135; 7 Asp. M. C. 587	545
"Governor," Abbot, Ad. 108	417
"Govino," 6 Quebec L. R. 57	75, 120
Grainger v. Martin (1862), 4 B. & S. 9; 8 L. T. 796; 11 W. R. 758; affirming 2 B. & S. 456; 8 Jur. N. S. 995; 31 L. J. Q. B. 186....	176
"Granite State," 3 Wall. 310	344, 460
"Gray Eagle," 9 Wall. 505	75
— 1 Bissel, 476; 2 <i>ibid.</i> 25	315
"Great Eastern" (1864), Holt, 169	272
— (1864), 3 Moo. P. C. N. S. 31; 11 L. T. 5; 2 Mar. Law Cas. O. S. 97	9, 369, 395, 399, 435
Great Western Rail. Co. v. McCarthy (1887), 12 App. Cas. 218; 56 L. J. P. O. 33; 56 L. T. 582; 35 W. R. 429; 51 J. P. 532....	250
Green v. New River Co. (1792), 4 T. R. 589	82
Greenland v. Chaplin (1851), 5 Ex. 243; 19 L. J. Ex. 293; 15 L. T. 185	26, 28, 40
"Greenpoint," 18 Fed. Rep. 186	243, 466
— 31 Fed. Rep. 231	38, 468
Greer v. Poole (1880), 5 Q. B. D. 272; 49 L. J. Q. B. 463; 42 L. T. 687; 28 W. R. 582; 4 Asp. M. C. 300	264
"Grenadier" and "August Korff," 74 Fed. Rep. 974.....	61, 364
"Greta Holme," "Emerald," (1896) P. 192; 7 Asp. M. C. 138; reversed (1897) App. Cas. 596; 66 L. J. Ad. 166; 77 L. T. 231; 8 Asp. M. C. 317—H. L.	129

	PAGE
"Griefswald" (1859), Swab. 430	220, 234, 275
Grill v. General Iron Screw Collier Co. (1866), L. R. 1 C. P. 600; 35 L. J. C. P. 321; aff. L. R. 3 C. P. 476; 37 L. J. C. P. 205; 18 L. T. 485; 16 W. R. 796—Ex. Ch....3, 80, 125, 247, 248, 249, 252	261
"Grovehurst," (1910) P. 316; 79 L. J. P. 124; 103 L. T. 239— C. A.	11, 15, 337, 338, 431, 444
"Grube" v. Stagg, Seld. Ser. Admiralty, II. lxxxiv.	160
"Guldfaxe" (1869), L. R. 2 A. & E. 325; 38 L. J. Ad. 12; 19 L. T. 748; 17 W. R. 578	232, 280
"Guildhall," (1908) P. 29; 98 L. T. 7; 77 L. J. P. 52; 10 Asp. M. C. 585; on app., (1908) A. C. 159; 98 L. T. 763; 77 L. J. P. 113	541
Gull v. Carswell (1709), Marsd. Ad. Cas. 295	110, 163
"Gustaf" (1860), Lush. 506; 31 L. J. Ad. 207; 6 L. T. 660	94
..... See "New Ed."	
"Gustafsberg," (1905) P. 10; 92 L. T. 630; 74 L. J. P. 42; 10 Asp. M. C. 61	431
"Guyandotte," 39 Fed. Rep. 575	455
"Guy Mannering" (1882), 7 P. D. 52; 51 L. J. Ad. 17; 46 L. T. 110; 30 W. R. 523; on app. 7 P. D. 132; 51 L. J. Ad. 57; 30 W. R. 835; 4 Asp. M. C. 558—C. A.	226, 239, 241, 527, 528
"Gypsum Prince," 67 Fed. Rep. 612	47

H.

"H. F. Dimock," 77 Fed. Rep. 226	358, 359
"H. M. Whitney," 86 Fed. Rep. 697	212
"H. P. Baldwin," Brown, Ad. 300	445, 457
"H. S. Nichols," 53 Fed. Rep. 665	103
"H. W. Hills," 21 Fed. Rep. 727	316
Haberdyne v. Reeve, Seld. Ser. Admiralty, II. lxxxiv.	161
"Hackensack," 32 Fed. Rep. 800	476
..... 5 Fed. Rep. 121	480
"Hagen," (1908) P. 189; 98 L. T. 891; 77 L. J. P. 124; 11 Asp. M. C. 66	266
Haigh v. Royal Mail Steam Packet Co. (1883), 52 L. J. Q. B. 395, 640; 48 L. T. 267; 49 <i>ibid.</i> 802; 5 Asp. M. C. 47, 189	247
Haight v. Bird, 26 Fed. Rep. 539	471
"Halfdan," Ship. Gaz. 22nd Feb. 1908	523
Hall v. Cook (not reported)	220
— v. Hill, Seld. Ser. Admiralty, II. lxxxiv.	161
"Hallett," Ad. Div. 9th Aug. 1887	455
"Halley" (1868), L. R. 2 A. & E. 3; 17 L. T. 329; 37 L. J. Ad. 1; 16 W. R. 284; on app. 5 Moo. P. C. N. S. 262; L. R. 2 P. C. 193; 37 L. J. Ad. 33; 18 L. T. 879; 16 W. R. 998.....	87, 97, 118, 222, 226, 228, 236, 237
Halliday v. Harris (1874), L. R. 9 C. P. 668; 43 L. J. C. P. 350; 30 L. T. 680; 22 W. R. 756	95

	PAGE
Hamburg Americanische Packetfahrt Actien Gesellschaft v. Burrell. See "Franconia."	
Hamilton v. Baker. See "Sara."	
Hammond v. Rogers. See "Christiana."	
Hancock v. York, Newcastle, and Berwick Railway Co. (1850), 10 C. B. 348	103
"Hand of Providence" (1856), Swab. 107	10, 422, 424
Handayside v. Wilson (1828), 3 Car. & P. 528	11, 53, 437, 438
"Hannah Park" and "Lena" (1866), 14 L. T. 675	122
"Hannibal" and "Queen" (1867), L. R. 2 A. & E. 53; 37 L. J. Ad. 12	72, 74
"Hansa" (1887), 58 L. T. 530; 6 Asp. M. C. 268	124
—— 5 Bened. 501	358, 359, 363
"Harberton," (1913) P. 149; 83 L. J. P. 20; 108 L. T. 735; 12 Asp. M. C. 342; 29 T. L. R. 490	537, 538
"Hare," (1904) P. 331; 90 L. T. 323; 73 L. J. P. 47; 9 Asp. M. C. 547	300, 361, 523
Harmer v. Bell. See "Bold Buccleugh."	
Harmond v. Pearson (1808), 1 Camp. 515	103
"Harmonides," (1903) P. 1	119
Harmony, &c. v. United States. See "Malek Adhel."	
"Harold," 84 Fed. Rep. 698	212, 353, 358
"Harrington" (1888), 13 P. D. 48; 57 L. J. Ad. 45; 59 L. T. 72; 6 Asp. M. C. 282	188, 265
Harris v. Anderson (1863), 14 C. B. N. S. 499	40, 210
—— v. Hamburg, &c. Gesellschaft, Owners of "Franconia" (1877), 2 C. P. D. 173; 46 L. J. C. P. 363	222, 266
—— v. Mobbs (1876), 3 Ex. D. 268; 39 L. T. 164	43
—— v. Quine (1869), L. R. 4 Q. B. 653; 10 B. & S. 644; 38 L. J. Q. B. 331; 20 L. T. 947; 17 W. R. 967	233
—— v. Willis (1855), 15 C. B. 710; 24 L. J. C. P. 93	270
"Harrisburg," 71 Fed. Rep. 894	397
—— 119 U. S. Rep. 199	232
"Harry," 15 Fed. Rep. 161	477
"Harton" (1884), 9 P. D. 44; 53 L. J. Ad. 25; 50 L. T. 370; 32 W. R. 597; 5 Asp. M. C. 213	69, 359, 410
"Harvest" (1886), 11 P. D. 14, 90; 55 L. J. Ad. 35; 54 L. T. 274; 55 <i>ibid.</i> 202; 34 W. R. 491; 5 Asp. M. C. 546; 6 <i>ibid.</i> 5...425, 487, 547	
"Harvest Home," (1905) P. 177; 10 Asp. M. C. 118; 93 L. T. 395; 74 L. J. P. 65	206, 207, 456
Hastorf v. Mayor, &c. of City of New York, 64 Fed. Rep. 869 ...	463
"Haswell" (1864), Br. & L. 247	269
"Havana," 54 Fed. Rep. 411	458
Havelock v. Rockwood (1799), 8 T. R. 268	234
"Haversham Grange," (1905) P. 307; 93 L. T. 733; 74 L. J. P. 115; 10 Asp. M. C. 156	129
"Haverton," 31 Fed. Rep. 563	333, 373
"Havilah," 50 Fed. Rep. 331	125
Hawkins v. Morgan (1880), 49 L. J. Q. B. 618	284
"Hawthornbank," (1904) P. 129; 90 L. T. 293; 73 L. J. P. 18; 9 Asp. M. C. 535	326, 327

	PAGE
<i>Hay v. Le Neve</i> (1824), 2 Shaw's Scotch Appeal Cas. 395 ...	31, 43, 137, 142, 143, 166, 168
<i>Hayn v. Culliford</i> (1878), 4 C. P. D. 182; 48 L. J. C. P. 372; 40 L. T. 536; 27 W. R. 541; 4 Asp. M. C. 48, 128 ...	152, 245
" <i>Hazelmere</i> ," (1911) P. 69; 80 L. J. P. 25; 103 L. T. 890; 11 Asp. M. C. 536—C. A.	386, 443
<i>Heard v. Holman</i> (1865), 19 C. B. N. S. 1	127
" <i>Hector</i> " (1883), 8 P. D. 218; 52 L. J. Ad. 47 (costs); <i>ibid.</i> 51 (limitation); 48 L. T. 890; 31 W. R. 881; 5 Asp. M. C. 101—C. A.	102, 134, 151, 275, 289, 290, 293, 294
<i>Hedges v. London and St. Katherine Dock Co.</i> (1886), 16 Q. B. D. 597; 55 L. J. M. C. 46; 54 L. T. 427; 34 W. R. 503; 5 Asp. M. C. 539	288
<i>Hedley v. Pinkney & Sons S.S. Co.</i> , (1894) App. Cas. 222; 63 L. J. Q. B. 419; 70 L. T. 630; 42 W. R. 497; 7 Asp. M. C. 483	115
" <i>Hedwig</i> " (1853), 1 Sp. 19	271
" <i>Heinrich Bjorn</i> " (1886), 10 P. D. 44; on app. 11 App. Cas. 270; 54 L. J. Ad. 80; 55 L. T. 66; 33 W. R. 719; 6 Asp. M. C. 1..89, 91, 96	
" <i>Helen Cooper</i> " and " <i>R. L. Mabey</i> ," 7 Blatchf. 378	460
" <i>Helen Keller</i> ," 50 Fed. Rep. 142	420, 462
" <i>Helenslea</i> " (1883), 7 P. D. 57; 51 L. J. Ad. 16; 47 L. T. 446; 30 W. R. 616; 4 Asp. M. C. 594	266, 276
" <i>Helvetia</i> " (1868), 3 Asp. M. C. 43, n.	313
<i>Henderson v. Henderson</i> (1843), 3 Ha. 100	233
" <i>Henri IV.</i> ," 13 Quebec L. R. 379	42, 124
" <i>Henry Coxon</i> " (1878), 3 P. D. 156; 47 L. J. Ad. 83; 38 L. T. 819. 271	
" <i>Henry M. Clark</i> ," 22 Fed. Rep. 752	118
" <i>Henry Morton</i> " (1874), 31 L. T. 859; 2 Asp. M. C. 466	417, 472, 485, 547
" <i>Herald</i> " (1890), 63 L. T. 324; 6 Asp. M. C. 542	295
" <i>Hercules</i> " (division of loss), 20 Fed. Rep. 205	153
————— 51 Fed. Rep. 452	437, 438
" <i>Hermod</i> " (1890), 62 L. T. 670; 6 Asp. M. C. 509	322, 525
" <i>Hero</i> ," (1911) P. 128; 80 L. J. P. 66; 105 L. T. 87; 27 T. L. R. 391; 12 Asp. 10; reversed (1912) App. Cas. 300; 106 L. T. 82; 56 S. J. 269; 28 T. L. R. 216; 12 Asp. 108; 81 L. J. P. 26 ..	25, 27, 30, 31, 34, 35, 36, 109
<i>Hibbs v. Ross</i> (1866), 5 B. & S. 655; L. R. 1 Q. B. 534; 35 L. J. Q. B. 193; 12 Jur. N. S. 812; 15 L. T. 67; 14 W. R. 914	78
" <i>Hibernia</i> " (pilot; costs; presumption) (1874), 31 L. T. 805; 24 W. R. 60; 2 Asp. M. C. 454—P. C.	59, 60, 291, 456
————— (1858) (pilot; inevitable accident), 4 Jur. N. S. 1244. 18, 20, 199	
<i>Highfield v. Peake</i> (1827), Moo. & M. 109	271
" <i>Highgate</i> " (1890), 62 L. T. 841; 6 Asp. M. C. 512	389, 392, 394, 435, 439
" <i>Highland Loch</i> ," (1911) P. 261; 81 L. J. P. 30; (1912) App. Cas. 312; 106 L. T. 81; 12 Asp. M. C. 106; 28 T. L. R. 213—H. L. (E.) 4, 31, 43, 483	
<i>Hill v. Andus</i> (1855), 1 K. & J. 263; 24 L. J. Ch. 229; 3 W. R. 230	191, 288

TABLE OF CASES.

xli

	PAGE
"Hirondelle," Ship. Gaz. Dec. 15th, 1905	343
"Hjemmet" (1880), 5 P. D. 227; 49 L. J. Ad. 66; 42 L. T. 514; 4 Asp. M. C. 274	206, 264
Hobbs v. London & South Western Rail. Co. (1875), L. R. 10 Q. B. 111; 44 L. J. Q. B. 49; 32 L. T. 252; 23 W. R. 520	134
"Hochung" and "Lapwing" (1881), 7 App. Cas. 512; 51 L. J. P. C. 92; 47 L. T. 485; 31 W. R. 303; 5 Asp. M. C. 39	59, 75, 269
Hodgkinson v. Fernie (1857), 2 C. B. N. S. 415; 26 L. J. C. P. 217; 3 Jur. N. S. 818	82
Hoffman v. Union Ferry of Brooklyn, 68 New York (Sicker's) Rep. 385; 7 Amer. Rep. 435	123, 366
Hole v. Sittingbourne Rail. Co. (1860), 6 H. & N. 488; 30 L. J. Ex. 81; 3 L. T. 750; 9 W. R. 274	33
"Hollandia" and "John Ormston" (1885) (not reported)	320
Holman v. Irvine Harbour Trustees (1877), 4 Sess. Cas. 4th ser. 406	109, 242, 244
Homer Ramsdell Co. v. Compagnie Générale Transatlantique, 182 U. S. Rep. 406	243
"Hope" (1840) (port helm), 1 W. Rob. 154	54, 278, 297
— (warping) (1843), 2 W. Rob. 8	473
"Hopewell" and "Prosperous," <i>Rennen v. Humble</i>	163
Hopton c. a pink, Seld. Ser. Adm. II. 79	87
"Hornet," (1892) P. 361; 68 L. T. 236; 7 Asp. M. C. 262	27, 124, 146, 456, 458
Houstoun v. Marquis of Sligo (1885), 29 Ch. D. 448; 52 L. T. 96 ...	233
"Howard," 30 Fed. Rep. 280	126
"Howard B. Peck," 48 Fed. Rep. 334	345, 463
"Howard Carroll," 41 Fed. Rep. 159	195, 388
Howard, Smith & Co. v. Wilson, (1896) App. Cas. 579; 65 L. J. P. C. 66; 75 L. T. 81; 8 Asp. M. C. 197—P. C.	106, 125
"Hubbuck," Ad. Div. 28th June, 1887	339, 411
"Hudson," 5 Bened. 206	366, 467
— 15 Fed. Rep. 162	111, 210, 218
"Hudson City," 38 Fed. Rep. 446	468
Huggett v. Montgomery (1807), 2 Bos. & P. N. R. 446	3
Hughes v. Percival (1882), 8 App. Cas. 443; 52 L. J. Q. B. 719; 49 L. T. 189; 31 W. R. 725	83
Hughes v. Sutherland (1881), 7 Q. B. D. 160; 50 L. J. Q. B. 567; 45 L. T. 287; 29 W. R. 867; 4 Asp. M. C. 459	179
Humboldt Lumber Manufacturers' Association, In re, 60 Fed. Rep. 428	217
Hunter v. M'Gown (1819), 1 Bligh, 573	174
"Huntress," 2 Sprague, 61	14
"Huntsman" (1911), 104 L. T. 464; 11 Asp. M. C. 606	394
Hutton c. Stoker, "Friends Goodwill" and "Peggy"	164
Hyman v. Helm (1883), 24 Ch. D. 531; 49 L. T. 376; 32 W. R. 258	233

I.

	PAGE
"I. M. North," 37 Fed. Rep. 270	126
"Iberia," 40 Fed. Rep. 893	479
"Ice King," 52 Fed. Rep. 894	75
"Ida" (1860) (liability; appearance), Lush. 6; 1 L. T. 417 ...	40, 79, 233
—— and "Mary Ida" (1878) (not reported)	316
—— and "Wasa" (1866), 15 L. T. 103; 2 Mar. Law Cas. O. S. 414	11, 437, 438, 469
"Illinois," 13 Otto, 298	394
"Ilos" (1857), Swab. 100	113
"Imbro" (1889), 14 P. D. 73; 58 L. J. Ad. 49; 60 L. T. 936; 37 W. R. 559; 6 Asp. M. C. 392	339, 341, 383
"Immacolata Concezione" (1883), 8 P. D. 34; 47 L. T. 388; 31 W. R. 642; 4 Asp. M. C. 593	277
"Immaganda Sara Clasina" (1850), 7 Not. of Cas. 582; on app. 8 Moo. P. C. 75	12, 49, 54, 297, 392
"Imperial," 38 Fed. Rep. 614	211
Ince v. East Boston Ferry Co., 106 Mars. Rep. 149	458
"Independence." See "Arthur Gordon."	
"India," Ad. Div. 7th Dec. 1886	202
India, Secretary of State for v. Hewitt. See Secretary of State for India, &c.	
"Indian" and "Jessie" (1865), 12 L. T. 586; 2 Mar. Law Cas. O. S. 217	461
"Indian Chief" (1888), 14 P. D. 24; 58 L. J. Ad. 25; 60 L. T. 240; 6 Asp. M. C. 362	320, 342, 474, 534
"Indus" (1886), 12 P. D. 46; 56 L. J. Ad. 88; 56 L. T. 376; 35 W. R. 490; 6 Asp. M. C. 105—C. A.	20, 22, 42, 43
"Industrie" (1871), L. R. 3 A. & E. 303; 40 L. J. Ad. 26; 24 L. T. 446; 19 W. R. 728; 1 Asp. M. C. 17	38, 39, 314, 315, 342
—— 27 Fed. Rep. 767	44, 479
"Inflexible" (1856) (risk of collision), Swab. 32	307, 379
"Inflexible, H.M.S." (1857) (damages), Swab. 200; 5 W. R. 517..	118, 127, 128
Inman v. Reek. See "City of Antwerp."	
"Innisfail" and "Secret" (1876), 35 L. T. 819; 3 Asp. M. C. 337..	461
"Insulano" and "City of Mecca" (1882) (not reported)	303
"Inventor" (1905), 10 Asp. M. C. 99	267
"Invincible," 2 Gall. 29	220
"Iron Duke" (1845), 4 Not. of Cas. 585; aff. 2 W. Rob. 377.....	314
"Ironmaster" (pleading) (1860), 6 Jur. N. S. 732	269
—— (damages) (1859), Swab. 441	118, 119
"Irrawaddy," Ad. Div. 15th June, 1887	359
"Isca" (1887), 12 P. D. 34; 56 L. J. Ad. 47; 55 L. T. 779; 35 W. R. 382; 6 Asp. M. C. 63	201, 202, 206
"Islander," 152 Fed. Rep. 385	423
"Isle of Cyprus" (1890), 15 P. D. 134; 59 L. J. Ad. 90; 63 L. T. 352; 38 W. R. 719; 6 Asp. M. C. 534	273

TABLE OF CASES.

xliii

	PAGE
"Isle of Pines," 24 Fed. Rep. 498	195
"Itinerant" (1844), 2 W. Rob. 236	290, 363
"Ivanhoe" and "Martha M. Heath," 7 Bened. 213	193, 427

J.

"J. D. Peters," 42 Fed. Rep. 269	47
"J. H. Rutter," 35 Fed. Rep. 365	16, 463
"J. R. Hinde," (1892) P. 231; 61 L. J. Ad. 91; 67 L. J. 832; 7 Asp. M. C. 257	543
"J. R. P. Moore," 45 Fed. Rep. 267	44
"J. T. Easton," 24 Fed. Rep. 95	118
"J. W. Paxon," 24 Fed. Rep. 302	216
"Jack Jewett," 23 Fed. Rep. 927	215
"Jackson," 58 Fed. Rep. 607	28
Jackson v. Kruger (1885), 54 L. J. Q. B. 446; 52 L. T. 962	114
"Jacob" (1860), 1 Pritch. Ad. Dig. 3rd ed. 286; 5 Ir. Jur. N. S. 379	243
"Jacob Brandow," 39 Fed. Rep. 831	204
"Jacob Christensen," (1895) P. 281; 64 L. J. Adm. 92; 72 L. T. 902; 8 Asp. M. C. 21	281
"Jacob Landstrom" (1879), 4 P. D. 191; 40 L. T. 38; 27 W. R. Dig. 205; 4 Asp. M. C. 58	276
"James" (1856), 10 Moo. P. C. 162; Swab. 60; 4 W. R. 353 (reversing Swab. 55)	320, 372, 453
James v. London and South Western Rail. Co. (1872), L. R. 7 Ex. 187; 41 L. J. Ex. 82; 26 L. T. 187; 20 W. R. 538; on app. L. R. 7 Ex. 287; 41 L. J. Ex. 186; 27 L. T. 382; 21 W. R. 25; 1 Asp. M. C. 226—P. C.	282, 283
"James Berwind," 44 Fed. Rep. 693	214
"James Gray" and "John Fraser"; Cushing v. The Owners of "John Fraser," 21 How. 184	21, 207, 211, 217
"James T. Easton," 27 Fed. Rep. 464	42, 374
"James Watt" (1844), 2 W. Rob. 270	1, 14, 307, 401
"James Westoll," (1905) P. 47; 92 L. T. 150; 74 L. J. P. 9; 10 Asp. M. C. 29	277
Jamieson v. Drinkald (1826), 5 L. J. C. P. O. S. 30	53
"Jane Bacon" (1878), 27 W. R. 35; 6 W. R. 329....	11, 203, 204, 314, 437, 455
"Janet Wilson" (1857), Swab. 261	96
"Jassy," (1906) P. 270; 95 L. T. 363; 75 L. J. P. 93; 10 Asp. M. C. 278	230
"Java," 14 Wall. 189	24, 472
"Jay Gould," 19 Fed. Rep. 765	62
"Jennie S. Barker" (1875), L. R. 4 A. & E. 456; 44 L. J. Ad. 20; 33 L. T. 318; 3 Asp. M. C. 42	313, 320, 386

	PAGE
"Jeremiah" and "Providence," <i>Mason v. Johnson</i> (1702), <i>Marsd.</i>	
Ad. Ca. 282	163
<i>Jermin v. Shadfurth</i> , <i>Seld. Ser. Admiralty</i> , II. lxxxiv.	162
"Jesmond" and "Earl of Elgin" (1871), 8 <i>Moo. P. C. N. S.</i> 179;	
L. R. 4 P. C. 1; 25 L. T. 514; 1 <i>Asp. M. C.</i> 150	13, 307, 309, 381, 382, 403, 410, 453
"Jesse Spaulding," 50 <i>Fed. Rep.</i> 583	37, 420
"Jesse W. Knight," 45 <i>Fed. Rep.</i> 590	75
"Jessie" and the "Zaanland," (1907) P. 138; 86 L. J. P. 108;	
117 L. T. 342; 33 T. L. R. 367	463
<i>Jocelyn v. Wickett</i> , <i>Seld. Ser. Admiralty</i> , II. lxxxiv.	161
"Johann Friedrich" (1839), 1 <i>W. Rob.</i> 35	220, 223
"Johannesburg," (1907) P. 65; 76 L. J. P. 67; 96 L. T. 464;	
10 <i>Asp. M. C.</i> 402	108
<i>Johanssen v. Elvina</i> , 4 <i>Fed. Rep.</i> 573	39, 125, 131
"John A. Berkman," 6 <i>Fed. Rep.</i> 535	107
"John A. Carnie," 49 <i>Fed. Rep.</i> 682	216
"John and Mary" (1857), <i>Swab.</i> 471	95, 275, 278
"John Bellamy" (1872), L. R. 3 A. & E. 129; 39 L. J. Ad. 28; 22	
L. T. 244; 3 <i>Mar. Law Cas. O. S.</i> 360	257, 259
"John Boyne" (1877), 36 L. T. 29; 25 <i>W. R.</i> 756; 3 <i>Asp. M. C.</i>	
341	267
"John Brotherick" (1844), 8 <i>Jur.</i> 276	9
"John Buddle" (1847), 5 <i>Not. of Cas.</i> 387	9, 21, 435
"John Dunn" (1840), 1 <i>W. Rob.</i> 159	279
"John Fenwick" (1872), L. R. 3 A. & E. 500; 41 L. J. Ad. 38;	
26 L. T. 322; 1 <i>Asp. M. C.</i> 249	314, 315, 340, 345, 468
"John G. Stevens," 170 <i>U. S. Rep.</i> 113	91, 93
"John H. May," 52 <i>Fed. Rep.</i> 882	195, 211
"John Harley" and "William Tell" (1866), 13 L. T. 413; 2 <i>Mar.</i>	
<i>Law Cas. O. S.</i> 290	50, 464, 475
"John Hollway," (1900) P. 37; 69 L. J. Ad. 51; 81 L. T. 726;	
48 <i>W. R.</i> 416; 9 <i>Asp. M. C.</i> 36	542
"John King," 49 <i>Fed. Rep.</i> 469	401
"John L. Hasbrouck," 3 <i>Otto</i> , 405	430
"John M'Intyre" (limitation) (1881), 6 P. D. 200; 50 L. J. Ad.	
76 (<i>nom.</i> "John Ormston")	189
(Art. 18) (1884), 9 P. D. 135; 53 L. J. Ad. 115;	
51 L. T. 185; 33 <i>W. R.</i> 190; 5 <i>Asp. M. C.</i> 278—C. A.	361, 410
"John O'Scott," (1897) P. 64; 66 L. J. Ad. 47; 76 L. T. 222;	
8 <i>Asp. M. C.</i> 235—C. A.	547
"John Ormston." See "John M'Intyre."	
"John S. Darcy," 29 <i>Fed. Rep.</i> 644	7, 321
"John S. Smith," 27 <i>Fed. Rep.</i> 398	468
"John Taylor," 6 <i>Bened.</i> 227	392
"Johnson," 9 <i>Wall.</i> 146	9, 305
<i>Johnson v. Black.</i> See "Two Ellens" (1872).	
<i>Jolliffe v. Wallasey Local Board</i> (1874), L. R. 9 C. P. 62; 43	
L. J. C. P. 41; 29 L. T. 582; 2 <i>Asp. M. C.</i> 146	108

TABLE OF CASES.

xlv

	PAGE
Jones v. Boyce (1816), 1 Stark. 493	12
"Jonty Jenks," 54 Fed. Rep. 1021	215, 217, 218
"Joseph Rickett," Ship. Gaz., March 5th, 1901	541
"Joseph W. Dyer" v. The National Steamship Co., 14 Blatchf. 483; 4 Asp. M. C. 26	132, 170
Joyce v. Capel (1838), 8 Car. & Pay. 370	78
"Julia" (1861), Lush. 224; 14 Moo. P. C. (<i>nom.</i> Bland v. Ross) 210	16, 201, 203, 204, 209, 210
"Julia Fisher" (1877), 2 P. D. 115; 36 L. T. 257; 25 W. R. 756; 3 Asp. M. C. 380—C. A.	276, 277, 294
"Julia M. Hallock," 1 Sprague, 539	468
"Juliana" (1857), Swab. 20	54, 56
"Juliet Erskine" (1848), 6 Not. of Cas. 633	19, 354, 365
"Junista," 3 Otto, 337	110, 153, 211
"Juno" (dredging) (1894), 71 L. T. 341; 7 Asp. M. C. 506	320, 474, 534

K.

"Kaikoura" (1885), 2 Pr. Ad. Dig. 3rd ed. 1762	131
"Kaiser Wilhelm der Grosse," (1907) P. 259; 97 L. T. 366; 76 L. J. P. 138; 10 Asp. M. C. 504	422, 423
"Kaiser Wilhelm II." (1915), 85 L. J. P. 26; 31 T. L. R. 615...2, 26, 350, 351, 411	
"Kalamazoo" (1851), 15 Jur. 885	95, 96, 278
"Kanawha" (1911), 12 Asp. M. C. 317; 108 L. T. 433	268
"Karla" (1864), Br. & L. 367	296
"Karo" (1888), 13 P. D. 24; 57 L. J. Ad. 8; 58 L. T. 188; 6 Asp. M. C. 245	152, 283
"Kate," (1899) P. 165; 68 L. J. Ad. 41; 80 L. T. 423; 47 W. R. 669; 8 Asp. M. C. 539	119, 120, 127, 131
Kearney v. London, Brighton & South Coast Rail. Co. (1880), L. R. 6 Q. B. 759; 40 L. J. Q. B. 285; 24 L. T. 913; 20 W. R. 24—Ex. Ch.	45
Keddye c. De Frances, Seld. Ser. Admiralty, II. lxxxiii.	169
Kemp v. Halliday (1866), 6 B. & S. 723; L. R. 1 Q. B. 520; 21 Jur. N. S. 582; 35 L. J. Q. B. 156; 14 L. T. 762; 14 W. R. 697— Ex. Ch.	264
Kendrick v. Burnett (1897), 25 Ct. of Sess. Cas. 4th Ser. 82.....	232
"Kennebec," 108 Fed. Rep. 300	343
Kennedy v. "Sarmatian," 2 Fed. Rep. 911	341, 455, 488
"Kennet," (1912) P. 114; 81 L. J. P. 82; 105 L. T. 880; 12 Asp. M. C. 120	428, 473, 480, 537
"Kepler" (1875), 2 P. D. 40, n.	22, 459, 465
Kerr v. Screw Collier Co., (1910) App. Cas. 165	423
"Khedive." See "Voorwaarts" and "Khedive."	
Kidson v. McArthur (1878), 5 Ct. of Sess. Cas. 4th Ser. 936...17, 181, 342	
"Killeena," Ad. Div. Nov. 1891	371

	PAGE
"H.M.S. King Alfred," (1914) P. 84; 83 L. J. P. 61; 109 L. T. 956; 12 Asp. M. C. 401; 30 T. L. R. 102	109, 440, 441
Kinge <i>c.</i> Johnson, Seld. Ser. Admiralty, II. lxxxiii.	160
Kingscote, <i>Ex parte.</i> See Tillett, <i>Re.</i>	
"Kings County" (1904), 20 T. L. R. 202	338
"Kingston by the Sea," 3 W. Rob. 152	15, 194, 469, 470
"Kirby Hall" (1883), 8 P. D. 71; 52 L. J. Ad. 31; 48 L. T. 797; 31 W. R. 658; 5 Asp. M. C. 90	274, 360, 362, 410, 413
"Kirkwall" (1909), 100 L. T. 284; 11 Asp. M. C. 173	398
Kitchener <i>v.</i> Cocklin. See "Blessing" and "William and John."	
"Kjobenhavn" (1874), 2 Asp. M. C. 213; 30 L. T. 136	15, 16, 316, 428, 459, 466
"Knaresboro," (1900) (1907) P. 38, n.	423, 425
"Knarwater" (1894), 6 R. 784; 63 L. J. Ad. 65	14, 402
Knight <i>v.</i> Faith (1850), 15 Q. B. 649; 19 L. J. Q. B. 509; 14 Jur. 1114	257
Knott <i>c.</i> Foulgier, Seld. Ser. Admiralty, II. lxxxiv.	161
"Knutsford," (1891) P. 219; 64 L. T. 352; 39 W. R. 559; 7 Asp. M. C. 33	296
"Kolon," 9 Bened. 197	479
"Kong Magnus" (damage lien), (1891) P. 223; 63 L. T. 715; 6 Asp. M. C. 583	89, 96, 120
Koning Willem I., (1903) P. 114; 88 L. T. 807; 72 L. J. P. 28; 9 Asp. M. C. 425	48, 74, 359, 361
Kwasind (1915), 84 L. J. P. 102—C. A.	285

L.

"L. C. Waldo," 100 Fed. Rep. 502	385
"L. P. Dayton," 13 Dav. 337	42, 216
"La Bourgogne," 117 Fed. Rep. 261	232
"La Normandie," 53 Fed. Rep. 427	119
"La Plata" (1856), Swab. 223; on app. <i>ibid.</i> 298 ...	10, 194, 475, 483
Lack <i>v.</i> Seward (1829), 4 Car. & Pay. 106	455
"Laconia" (1863), 7 L. T. 164; on app. 2 Moo. P. C. N. S. 161; 33 L. J. Ad. 11; 12 W. R. 90	3, 167
"Lady Ann" (pleading) (1850), 7 Not. of Cas. 364	269
"Lady Anne" (negligence) (1850), 15 Jur. 18; see 7 Not. of Cas. 370	11, 375, 437, 438, 453
"Lady Campbell" (1825), 2 Hag. Ad. 5	139
"Lady Downshire" (1879), 4 P. D. 26; 43 L. J. Ad. 41; 39 L. T. 236; 27 W. R. 618; 4 Asp. M. C. 25	69, 261, 525
"Lady Pike," 21 Wal. 1	201
"Lady Wodehouse" (1886), 2 Times L. R. 252	541
Lake Erie Transp. Co. <i>v.</i> Gilchrist Transp. Co., 142 Fed. Rep. 89...	305
"Lake St. Clair" and "Underwriter," Wilson <i>v.</i> Canada Shipping Co. (1877), 2 App. Cas. 389; 36 L. T. 155; 3 Asp. M. C. 361 (varying 1 Quebec L. R. 323)...	14, 289, 370, 374, 375, 469, 470, 471, 479

	PAGE
"Lanarkshire" (1855), 1 Sp. 189	233
"Lancashire" (1874), L. R. 4 A. & E. 198; 29 L. T. 927; 2 Asp. M. C. 202	362, 366, 437, 475
— and "Knarwater," (1894) App. Cas. 1; 63 L. J. Ad. 80; 69 L. T. 663; 7 Asp. M. C. 376—H. L.	14, 402
Lancaster Canal Co. v. Parnaby. See Parnaby v. &c.	
"Langdale" (1907), 76 L. J. P. 154; 23 T. L. R. 683	177
"Lapwing." See "Hochung."	
Latham v. Hamilton and Merriman Co., 63 Fed. Rep. 856 ...	7, 37, 477
Laugher v. Pointer (1826), 5 B. & C. 547	84, 199
"Laura Lee," 24 Fed. Rep. 483	119
"Laura V. Rose," 23 Fed. Rep. 104	476
"Lauretta" (1879), 4 P. D. 25; 48 L. J. Ad. 55; 40 L. T. 444; 27 W. R. 902; 4 Asp. M. C. 118	294
Lawe v. Lee, Seld. Ser. Admiralty, II. lxxxiv.	161
Lawrence v. Jenkins (1873), L. R. 8 Q. B. 274; 42 L. J. Q. B. 147; 23 L. T. 406; 21 W. R. 577	28
Lawson v. Dumlin (1850), 9 C. B. 54	76
Leddy v. Gibson (1873), 11 Ct. of Sess. Cas. 3rd ser. 329	115
Leduc v. Ward (1888), 20 Q. B. D. 475; 57 L. J. Q. B. 379; 58 L. T. 908; 36 W. R. 537; 6 Asp. M. C. 290	249
"Legatus" (1856), Swab. 168; 5 W. R. 154	128
— and "Emily" (1865), Holt, 217	11, 437, 442
Leigh v. Ireland, Seld. Ser. Admiralty, II. lxxxiii.	159
"Leith" (1849), 7 Not. of Cas. 137	421
"Lemington" (1874), 2 Asp. M. C. 475; 32 L. T. 69	86, 99
"Lena" (1866), 14 L. T. 675	340
"Leo" (1860), Lush. 444; 31 L. J. Ad. 78; 6 L. T. 58	90, 296
— 34 Fed. Rep. 140	332
"Leon" (1881), 6 P. D. 143; 4 Asp. M. C. 404; 50 L. J. Ad. 59; 44 L. T. 613; 29 W. R. 916; on app. 5 Asp. M. C. 25.....	103, 170, 223, 224
Leonard v. Whitwell, 19 Fed. Rep. 547	128
"Leonidas," Stuart's Vice-Ad. Rep. Lower Canada (Lond. 1858), 226	470
"Lepanto," 50 Fed. Rep. 234	345
— (sound in fog), 21 Fed. Rep. 651	49, 358
"Leverington" (1886), 11 P. D. 117; 55 L. J. Ad. 78; 55 L. T. 386; 6 Asp. M. C. 7—C. A.	299, 384, 391, 422, 424
Leycester v. Logan (1857), 4 K. & J. 725; 6 W. R. 849; and see 3 K. & J. 446; 23 L. J. Ch. 306; 5 W. R. 334	175
"Libra" (1881), 6 P. D. 139; 4 Asp. M. C. 439; 45 L. T. 161....	303, 305, 438, 541
Lidgett v. Secretan (1870), L. R. 5 C. P. 190; 39 L. J. C. P. 196; 22 L. T. 272; 18 W. R. 692	257
"Lidskjalf" (1856), Swab. 117	461
Lighter No. 3 (1902), 18 T. L. R. 322	328
"Ligo" (1831), 2 Hagg. Ad. 356	3, 41
Lilley v. Doubleday (1881), 7 Q. B. D. 510; 41 L. T. 814; 51 L. J. Q. B. 310	134
"Lima" (1858), 4 Jur. N. S. 147	143

	PAGE
"Lime Rock," 55 Fed. Rep. 126	474
"Limerick" (1876), 1 P. D. 292; 34 L. T. 708; 3 Asp. M. C. 206— C. A.	236
<i>Limpus v. London General Omnibus Co.</i> (1862), 1 H. & C. 526; 32 L. J. Ex. 34; 9 Jur. N. S. 333; 7 L. T. 641; 11 W. R. 149.....	79, 80
"Linda" (1857), Swab. 306; 4 Jur. N. S. 146; 6 W. R. 196...20, 123, 127	
"Linda Flor" (1857), Swab. 309; 4 Jur. N. S. 172; 6 W. R. 197...	93
"Lindisfarne," (1908) Fo. 604	293
"Lindsay" (1867), Ir. Rep. 1 Eq. 259	123
<i>Little v. Burns</i> , "Owl" and "Ariadne" (1881), 9 Ct. of Sess. Cas. 4th Ser. 118	8, 301, 357, 381, 382, 402, 513
"Little Lizzie" (1870), L. R. 3 A. & E. 56; 23 L. T. 84; 18 W. R. 960	271
<i>Liver Alkali Co. v. Johnson</i> (1874), L. R. 9 Ex. 338; 43 L. J. Ex. 216; 31 L. T. 95; 2 Asp. M. C. 332—Ex. Ch.	245, 246
"Livia" (1871), 25 L. T. 887; 1 Asp. M. C. 204	15
"Livingstone" (1859), Swab. 519	329
"Ljudica" (1871), 23 L. T. 474	271
"Llanelly," (1914) P. 40; 83 L. J. P. 37; 110 L. T. 269; 12 Asp. M. C. 485; 30 T. L. R. 154	386
<i>Lloyd v. General Iron Screw Collier Co.</i> (1864), 3 H. & C. 284; 33 L. J. Ex. 269; 10 Jur. N. S. 661; 10 L. T. 586; 12 W. R. 882..247, 248	
— <i>v. Guibert</i> (1876), 6 B. & S. 100; L. R. 1 Q. B. 115; 33 L. J. Q. B. 241; 35 L. J. Q. B. 74; 13 L. T. 602—Ex. Ch.	170
"Lloyds." See "Sea Queen."	
"Lochlibo" (1850), 3 W. Rob. 310; 14 Jur. 1074; on app. <i>nom.</i> <i>Pollock v. M'Alpin</i> , 7 Moo. P. C. 427	19, 365
<i>Lockyer v. Offley</i> (1786), 1 T. R. 252	257
<i>Lohre v. Aitchison</i> (1879), 3 Q. B. D. 558; 46 L. J. Q. B. 715; 36 L. T. 794; 26 W. R. 42; on app. 4 App. Cas. 755; 49 L. J. Ad. 123; 41 L. T. 323; 28 W. R. 1; 4 Asp. M. C. 168—H. L.	118
"London, H.M.S.," (1914) P. 72; 83 L. J. P. 74; 109 L. T. 960; 12 Asp. M. C. 405; 30 T. L. R. 196	132
"London," <i>Morgan v. Sim.</i> See "City of London."	
— (port tack) (1849), 6 Not. of Cas. 29	42, 372
— (fog signals), (1904) P. 355; 91 L. T. 327; 73 L. J. P. 125; 10 Asp. M. C. 12	304, 339
— (costs), (1905) P. 152; 93 L. T. 393; 74 L. J. P. 71; 10 Asp. M. C. 109	293
— (inevitable accident) (1863), Br. & L. 82; 9 Jur. N. S. 1330; 9 L. T. 343; 1 Mar. Law Cas. O. S. 398	22, 290
<i>London and South Western Rail. Co. v. James</i> (1873), L. R. 8 Ch. 241; 42 L. J. Ch. 337; 28 L. T. 48; 21 W. R. 151; 1 Asp. M. C. 526	175, 184
<i>London School Board v. Lardner</i> , "Times," 20th Feb. 1884 ...261, 278	
<i>London Steamship Owners' Insurance Co. v. Grampian Steamship</i> <i>Co.</i> (1890), 24 Q. B. D. 663; 59 L. J. Q. B. 549; 62 L. T. 784; 38 W. R. 651; 6 Asp. M. C. 506—C. A.	150, 255
<i>London, Tilbury and Southend Rail. Co., In re</i> , and Trustees of <i>Gower's Walk Schools</i> (1890), 24 Q. B. D. 326; 62 L. T. 306; 59 L. J. Q. B. 162; 38 W. R. 343	28

TABLE OF CASES.

xlix

	PAGE
"Londonderry" (1845), 4 Not. of Cas. Suppl. xxxi.	314
"Longford" (1889), 14 P. D. 34; 58 L. J. Ad. 33; 60 L. T. 373; 37 W. R. 372; 6 Asp. M. C. 371—C. A.	86, 97, 278
"Longnewton" (1888), 59 L. T. 260; 6 Asp. M. C. 302	389, 538
"Lord Bangor," (1896) P. 28; 65 L. J. Ad. 6; 73 L. T. 414; 8 Asp. M. C. 217	15, 194, 353, 360, 402
"Lord Byron" (1879), cited Maude & Pollock, 4th ed. 607	232, 347
"Lord Melville" (1815), cited in 2 Shaw's App. Cas. 402	136
"Lord O'Neill," 66 Fed. Rep. 77	31
"Lord of the Isles" (1832), cited 2 Hag. 402	221
"Lord Saumarez" (1848), 6 Not. of Cas. 600	32, 354
"Lord Seaton" (1845), 2 W. Rob. 391; 4 Not. of Cas. 164	271, 272
"Lord Strathnairn" (1875) (not reported)	276
Lord Warden and Admiral of Cinque Ports v. The King in his Office of Admiralty (1831), 2 Hag. Ad. 438	288
Lords Bailiff Jurats of Romney Marsh v. Corporation of the Trinity House (1870), L. R. 5 Ex. 204; 39 L. J. Ex. 163; 18 W. R. 869; on app. L. R. 7 Ex. 247; 41 L. J. Ex. 106; 22 L. T. 446; 20 W. R. 952	16
"Lorenzo D. Baker," 24 Fed. Rep. 814	357
"Louisa" (1848), 6 Not. of Cas. 531; 3 W. Rob. 99	96
"Louisburg," 75 Fed. Rep. 424	60
"Louisiana," 3 Wall. 164	464
"Love Bird" (1881), 6 P. D. 80; 44 L. T. 650; 4 Asp. M. C. 427... 74, 289, 311, 316, 352, 410	60,
"Loyal" and "Challenger," 14 Quebec L. R. 135	203, 218
"Lucia Jantina" and "Mexican" (1864), Holt, 130	15, 73, 443
"Lucille," 15 Wall. 676	12, 15, 388
"Luckenback," 15 Fed. Rep. 924	217
"Lucy," 74 Fed. Rep. 572	413
Ludwig v. Holberg, 36 Fed. Rep. 914	351
"Luray," 24 Fed. Rep. 751	358
Luxford v. Large (1833), 5 Car. & Pay. 421	38, 39, 481
"Luzerne," 157 Fed. Rep. 391	12
"Lydia," 11 Blatchf. 415	366

M.

"M. J. McCaldin," 35 Fed. Rep. 330	454
"M. M. Caleb," 10 Blatchf. 467	15, 22
"M. Moxham" (1876), 1 P. D. 43; 45 L. J. Ad. 36; 33 L. T. 463; 24 W. R. 283; on app. 1 P. D. 107; 46 L. J. Ad. 17; 34 L. T. 559; 24 W. R. 650; 3 Asp. M. C. 191	87, 97, 225, 226
"Mac" (1882), 7 P. D. 38; 46 L. T. 206; 51 L. J. Ad. 20; 30 W. R. 552; on app. 7 P. D. 126; 51 L. J. Ad. 81; 46 L. T. 907; 4 Asp. M. C. 555	178, 237.
"McCallum" and "Odette," 7 Duval, Canada, 36	143
McCowan v. Baine. See "Niobe."	

M.

d

	PAGE
McDowall v. Great Western Rail. Co., (1902) 1 K. B. 618	28
McFarland v. Selby Smelting and Lead Co., 17 Fed. Rep. 253	455
McHenry v. Lewis (1883), 22 Ch. D. 397; 52 L. J. Ch. 325; 47 L. T. 549; 31 W. R. 305	233
Maclaren v. Compagnie Française de Navigation à Vapeur (1884), 9 App. Cas. 640. See "Thames" and "Lutetia."	
"McLeod" (1880), 5 P. D. 254; 50 L. J. Adm. 6	140
MacMahon v. Field (1881), 7 Q. B. D. 591; 50 L. J. Q. B. 311, 552; 44 L. T. 175; 45 L. T. 381	134
MacManus v. Crickett (1801), 1 East, 106	77, 79
McNeal, <i>Ex parte</i> , 13 Wall. 236	242
"Mæander" and "Florence Nightingale" (1862), 1 Moo. P. C. N. S. 63; Br. & Lush. 29; 9 Jur. N. S. 475; 8 L. T. 34; 11 W. R. 542	421, 423
"Magdeburgh" and "Henry Willard," Ad. Div. Jan. 16, 1885...	74
"Maggie Armstrong" and "Blue Bell" (1865), 14 L. T. 340; 2 Mar. Law Cas. O. S. 318	461, 463
"Maggie J. Smith," 16 Davis, 349	377, 433
"Maggie S. Hart," 38 Fed. Rep. 675	215
"Magna Charta" (1871), 25 L. T. 512; 1 Asp. M. C. 153	274, 357
"Magnet" and "Duke of Sutherland" (1873), L. R. 4 A. & E. 417; 44 L. J. Ad. 1; 32 L. T. 129; 2 Asp. M. C. 478	74, 273, 321, 323
"Maid of Auckland" (1848), 6 Not. of Cas. 240	3, 167
"Maid of Kent" (1881), 6 P. D. 178; 50 L. J. Ad. 71; 29 W. R. 897; 45 L. T. 718; 4 Asp. M. C. 476	121, 285
"Main" (1886), 11 P. D. 132; 55 L. J. Ad. 70; 55 L. T. 15; 34 W. R. 678; 6 Asp. M. C. 37—C. A.	340, 341, 383, 417
"Majestic," 48 Fed. Rep. 730	481
Majoribanks v. Boyd, "Times," 11th Dec. 1823	39, 131
"Malek Adhel," Harmony, &c. Owners v. United States, 2 How. 210	101
"Mali Ivo" (1869), L. R. 2 A. & E. 356; 38 L. J. Ad. 34; 20 L. T. 681	221, 233
"Maling," 110 Fed. Rep. 227	153, 452
Malster v. Humphreys, 3 Fed. Rep. 535	482
"Malvina" (1863), Lush. 493; 31 L. J. Ad. 112; 6 L. T. 369; on app. Br. & Lush. 57; nom. Malcomson v. Meeson, 1 Moo. P. C. N. S. 357; 9 Jur. N. S. 527; 8 L. T. 403; 11 W. R. 576	287, 421
"Manchester" (1839), 1 W. Rob. 62	272
"Mangerton" (1856), Swab. 120; 2 Jur. N. S. 620	9, 271, 305
"Manhasset," 34 Fed. Rep. 408	316
"Manitoba," 15 Davis, U. S. 97	149, 408, 456
"Mannheim," (1897) P. 13; 66 L. J. Ad. 6; 75 L. T. 424; 8 Asp. M. C. 210	233
Manzoni v. Douglas (1881), 6 Q. B. D. 145; 50 L. J. Q. B. 289; 29 W. R. 425	45
"Marathon" (1879), 48 L. J. Ad. 17; 40 L. T. 163	113
"Marcia Tribou," 2 Sprague, 17	33, 43, 455, 459
"Maréchal Suchet," (1896) P. 233; 66 L. J. Ad. 94; 74 L. T. 789; 45 W. R. 141; 8 Asp. M. C. 158	267

TABLE OF CASES.

11

	PAGE
"Maréchal Suchet," (1911) P. 1; 80 L. J. P. 51; 103 L. T. 848; 26 T. L. R. 660; 11 Asp. M. C. 553	202, 203, 205, 267
"Margaret" and "Clan Sinclair" (Thames Rules), <i>nom.</i> Cayzer v. Carron Co. (1884), 9 App. Cas. 873; 54 L. J. Ad. 18; 52 L. T. 361; 33 W. R. 281; 5 Asp. M. C. 204; 9 P. D. 47	28, 30, 31, 35, 36, 40, 41, 143, 145, 303, 456, 472, 484, 541
———— (1881) (damage), 6 P. D. 76; 50 L. J. Ad. 33; 42 L. T. 663; 4 Asp. M. C. 276; on app. 6 P. D. 76; 50 L. J. Ad. 67; 44 L. T. 291; 29 W. R. 533; 4 Asp. M. C. 375.....	1, 2, 26, 27, 37, 126, 145, 543
———— 4 Otto, 494	201, 216
———— and "Tuscar" (1866), 15 L. T. 86	329, 472
"Margaret J. Sanford," 30 Fed. Rep. 714; on app. 37 Fed. Rep. 148	44, 465
Margetts and Ocean Accident and Guarantee Corporation, <i>In re</i> , (1901) 2 K. B. 792; 70 L. J. K. B. 762; 49 W. R. 669	252
"Maria" (1839) (pilot), 1 W. Rob. 95	97, 227, 236
"Maria des Dorez" (1863), Br. & L. 27; 32 L. J. Ad. 163; 7 L. T. 838; 11 W. R. 500	272
"Maria Martin," 12 Wall. 31	31, 204
"Marie Gartz" (1913), 30 T. L. R. 702	427
"Mariel," 32 Fed. Rep. 103	475
"Marion," 56 Fed. Rep. 271	33, 341
"Marion W. Page," 36 Fed. Rep. 329	195
"Mariska," 107 Fed. Rep. 989	111
"Mark Eveline," 16 Wall. 348	377
"Markland" (1871), L. R. 3 A. & E. 340; 24 L. T. 596; 1 Asp. M. C. 261	93
"Marmion" (1872), 27 L. T. 255; 1 Asp. M. C. 412	370, 395
———— (1913), 29 T. L. R. 646	452
"Marpesia" (1872), 8 Moo. P. O. N. S. 468; L. R. 4 P. C. 212; 26 L. T. 333; 1 Asp. M. C. 261	13, 19, 20, 23, 41, 167, 168, 269, 290, 294, 453
"Marpessa," (1891) P. 403; 61 L. J. Ad. 9; 66 L. T. 356; 40 W. R. 239; 7 Asp. M. C. 155	122, 131
———— (1907) A. C. 241; 97 L. T. 1; 76 L. J. P. 128; 10 Asp. M. C. 232	130
Marshall v. "Conroy," 2 Fed. Rep. 785	316
———— v. Moran. See "Ocean Wave" (1870).	
Marsingill c. Taylor (1706), "Adventure" and "Supply"	163
"Martello," 46 Davis, 64	49, 60, 410
———— (speed), 39 Fed. Rep. 505	364
Martin v. Crompe (1697), 1 Ld. Raym. 340	114
———— v. Green (1664), 1 Keb. 730; Seld. Ser. Adm. II. lxxxiv. 161, 220	
———— v. Martin & Co., (1897) 1 Q. B. 429	276
"Mary" and "Rowland" (1881), Murton, Wreck Enquiries.....	454
———— (costs) (1881), 7 P. D. 201; 48 L. T. 28; 31 W. R. 248; 5 Asp. M. C. 33	293

	PAGE
"Mary" (pilot) (1879), 5 P. D. 14; 48 L. J. Ad. 66; 41 L. T. 351; 28 W. R. 95; 4 Asp. M. C. 183	196
"Mary or Alexandra" (1865), L. R. 1 A. & E. 335; 16 L. T. 98; 2 Mar. Law Cas. O. S. 477	294
"Mary Ann" (1865), L. R. 1 A. & E. 8; 12 Jur. N. S. 31; 35 L. J. Ad. 6; 13 L. T. 384; 14 W. R. 136	96
——— 11 Fed. Rep. 336	390, 396
"Mary Augusta," 55 Fed. Rep. 343	12
"Mary C. Elphicke," 115 Fed. Rep. 375	381
"Mary Fraser," 26 Fed. Rep. 872	463
"Mary Hounsell" (1879), 4 P. D. 204; 48 L. J. Ad. 54; 40 L. T. 368; 28 W. R. 140; 4 Asp. M. C. 101	14, 197, 204, 332
"Mary Ida," 20 Fed. Rep. 741	153
"Mary L. Cushing," 60 Fed. Rep. 110	21
"Mary Lohden" (1887), 58 L. T. 461; 6 Asp. M. C. 262	422, 529
"Mary Powell," 36 Fed. Rep. 598	465
Mary Tug Co. v. British India Steam Nav. Co. See "Meanatchy."	
"Maryland," 19 Fed. Rep. 551	215
——— (burden of proof), 14 Fed. Rep. 367	44
Mason c. Johnson. See "Jeremiah" and "Providence."	
——— v. Sainsbury (1782), 3 Dougl. 61	259
"Massachusetts" (1840), 1 W. Rob. 371	125, 463
"Masten," Brown, Ad. 436	462
"Masters" and "Raynor," Brown, Ad. 342	455
"Matiana" (1908), 25 T. L. R. 51	351
Matthews v. London Street Tramways Co. (1889), 58 L. J. Q. B. 12; 60 L. T. 47	114
"Maverick," 1 Sprague, 23	474
——— 75 Fed. Rep. 845	459
"Max Morris," 30 Davis, 1	153, 154
"May Queen," Ad. Div. 1st May, 1900	44
"Maybey" and "Cooper," 7 Blatchf. 378; 14 Wall. 204	19, 211
Mayhew v. Boyce (1816), 1 Stark. 423	475
Mayor, &c. of Colchester v. Brooke (1845), 7 Q. B. 339	43, 82
"Mayumba," 21 Fed. Rep. 476	195
"Meanatchy," "Mary" Tug Co. v. British India Steam Nav. Co., (1897) App. Cas. 351; 66 L. J. P. C. 92	42, 61, 460
"Mediana," (1900) App. Cas. 113; 69 L. J. Ad. 35; 82 L. T. 95; 48 W. R. 398; 9 Asp. M. C. 41	129, 130
"Medusa," 46 Fed. Rep. 303	301
"Megantic" (1915), 31 T. L. R. 190	450
"Melampus," Ship. Gaz., Dec. 22nd, 1903	440
"Mellona" (1847) (evidence), 10 Jur. 992	272
——— (1847) (speed; look-out; damages), 3 W. Rob. 7...121, 453 ——— (1848) (bail; limitation; <i>in rem</i>), 3 W. Rob. 16	86, 89, 90, 99, 103, 170
"Melpomene" (1873), L. R. 4 A. & E. 129; 42 L. J. Ad. 45; 28 L. T. 76; 21 W. R. 956; 1 Asp. M. C. 515	275
Melton v. Nesbit (1824), 1 C. & P. 70	273
"Melvina," 43 Fed. Rep. 77	469

TABLE OF CASES.

lii

	PAGE
"Memnon" (1889), 62 L. T. 84; 6 Asp. M. C. 488	14, 60, 63, 65, 304, 407, 410, 445
"Mentor" (1799), 1 C. Rob. 179	109
"Merchant Prince" (1865) (collision), 10 P. D. 139; 54 L. J. Ad. 79; 53 L. T. 914; 34 W. R. 231; 5 Asp. M. C. 520...	314, 345, 433
———— (jamming of wheel chain), (1892) P. 179; 67 L. T. 251; 7 Asp. M. C. 208—C. A.	20, 22, 42
Meretony v. Dunlope (1782), cited 1 T. R. 260	257
"Merle" (1874), 31 L. T. 447; 2 Asp. M. C. 402	83, 93, 96
"Merrimac," 14 Wall. 199	24, 478
"Mersey," (1901) P. 369; 70 L. J. Ad. 100; 85 L. T. 584; 9 Asp. M. C. 273	277
Mersey Docks and Harbour Board v. Turner, "Zeta," (1891) P. 216; 65 L. T. 230; 7 Asp. M. C. 64; on app. (1893) App. Cas. 468; 63 L. J. Ad. 17; 69 L. T. 630; 7 Asp. M. C. 369...	92, 244, 286, 287, 288, 295
Mersey Docks and Harbour Trustees v. Gibbs (1866), L. R. 1 H. L. 93; 12 Jur. N. S. 571; 14 L. T. 677; 14 W. R. 872...	106, 107, 244
"Merthyr" (1898), 79 L. T. 676; 8 Asp. M. C. 475	49, 308, 353, 354, 409
"Mesaba," 111 Fed. Rep. 215	393
"Messicano" (1916), 32 T. L. R. 519	280
Metcalf v. Hetherington (1860), 5 H. & N. 719; 11 Ex. 257; 8 W. R. 475—Ex. Ch.	244
"Meteor" (1875), Ir. Rep. 9 Eq. 567	31, 143
"Mexico," 84 Fed. Rep. 504	16
"Michigan," 52 Fed. Rep. 501	46
———— 63 Fed. Rep. 280	357, 358
Middlesex Quarry Co. v. "Albert," 2 Fed. Rep. 821	46
Midland Insurance Co. v. Smith (1881), 6 Q. B. D. 561; 50 L. J. Q. B. 329; 45 L. T. 411; 29 W. R. 850	257, 259
"Midlothian" (1851), 15 Jur. 806	272
"Milan" (1860), Lush. 388; 31 L. J. Ad. 105; 5 L. T. 590...	56, 59, 111, 114, 134, 140, 148, 151, 153, 223, 291
"Milanese" (1880), 4 Asp. M. C. 318, 418; on app. 43 L. T. 107; 4 Asp. M. C. 438—H. L.	294, 351, 354, 363
Miller v. Powell (1875), 2 Ct. of Sess. Cas. 4th Ser. 976	283
"Milligan," 12 Fed. Rep. 338	33
Mills v. Armstrong. See "Bernina," No. 2.	
Mills' Estate, Re (1886), 34 Ch. D. 24; 56 L. J. Ch. 60; 55 L. T. 465; 35 W. R. 65	289
"Millwall," (1905) P. 155; 98 L. T. 426; 74 L. J. P. 61; 10 Asp. M. C. 15	207
"Milwaukee," Brown, Ad. 313	305, 307, 403, 428, 431, 448, 452
Milwaukee Rail. Co. v. Kellogg, 4 Otto, 469	27
"Minna" (1868), L. R. 2 A. & E. 97	113, 458
"Minnehaha" (1861), Lush. 335; 15 Moo. P. C. 133; 30 L. J. Ad. 211; 7 Jur. N. S. 1257; 4 L. T. 810; 9 W. R. 925	202
"Minnie," (1894) P. 336; 71 L. T. 715; 7 Asp. M. C. 421	422, 487
———— (damages), 26 Fed. Rep. 860	125

	PAGE
"Minnie C. Taylor," 52 Fed. Rep. 323	195
"Miranda" (1882), 7 P. D. 185; 51 L. J. Ad. 56; 47 L. T. 447; 30 W. R. 615; 4 Asp. M. C. 595	268
"Mischief," 39 Fed. Rep. 510	344
Mitchell v. Tarbutt (1794), 5 T. R. 649	110
"Mobile" (1856), Swab. 69; on app. Swab. 127; 10 Moo. P. C. 467; 4 W. R. 708	376, 470
"Moderation" (1863), 1 Moo. P. C. 528; 9 L. T. 586; 1 Mar. Law Cas. O. S. 413	14, 307, 436
Moffat v. Bateman (1869), L. R. 3 P. C. 115; 6 Moo. P. C. N. S. 369	16, 45
"Mohawk," 42 Fed. Rep. 189	365
"Mohler," 21 Wall. 230	478
"Molière," (1893) P. 217; 62 L. J. Ad. 102; 69 L. T. 263; 1 R. 639; 7 Asp. M. C. 364	310, 383
Monaghan v. Horn, "Garland," Duval (Canada), 409	280
"Monarch" and "Success" (1840), 1 W. Rob. 21	142, 167
"Monica," (1912) P. 142; 81 L. J. P. 92; 106 L. T. 349; 12 Asp. M. C. 164; 28 T. L. R. 154	268
"Monkseaton" (1889), 14 P. D. 51; 58 L. J. Ad. 52; 60 L. T. 662; 37 W. R. 523; 6 Asp. M. C. 383	108, 290, 291, 294
"Monmouth" and "Raritan," 44 Fed. Rep. 809	481
"Monsoon" and "Neptune" (1865), Holt, 186; 13 L. T. 510; 2 Mar. Law Cas. O. S. 289	390
"Monte Rosa," (1893) P. 23; 62 L. J. Ad. 20; 68 L. T. 299; 41 W. R. 304; 7 Asp. M. C. 326	27, 32, 36, 69, 142, 146, 543
"Monticello," 1 Pars. on Ship. (ed. 1869) 566	351
"Moonlight," 50 Fed. Rep. 478	477
"Moorcock" (1888), 14 P. D. 64; 58 L. J. Ad. 73; 60 L. T. 654; 37 W. R. 439; 6 Asp. M. C. 357, 373	106
Morewood v. Pollok (1853), 1 El. & B. 743	184
Morgan v. Ravey (1861), 6 H. & N. 265	248
—— v. Sim. See "City of London."	
"Morgengry" and "Blackcock," (1900) P. 1; 69 L. J. Ad. 3; 81 L. T. 417; 48 W. R. 121; 8 Asp. M. C. 591—C. A.	147, 208
"Morning Light," 2 Wall. 550	23, 363, 454, 457
Morrel v. Rheinfank, 24 Fed. Rep. 94	79
Morrison v. General Steam Nav. Co. (1853), 8 Ex. 733; 22 L. J. Ex. 233; 17 Jur. 507; 1 W. R. 311—Ex. Ch.	33, 56
Morrison's v. Shaw, Savill & Albion Co. (1916), aff. 2 K. B. 783; 85 L. J. K. B. 724; 115 L. T. 508; 61 S. J. 9; 32 T. L. R. 712...246, 249	
Mors v. Slue (1672), 3 Keb. 72, 112, 135; 1 Ventris, 190, 238; 1 Mod. 85; T. Raym. 220; 2 Lev. 69	250
Morton v. Hutchinson. See "Frankland" and "Kestrel."	
Mostyn v. Fabrigas (1774), 1 Cowp. 161	221
"Mount Hope," 84 Fed. Rep. 910	39, 45, 211, 212, 357, 468
"Mourne," (1901) P. 68; 70 L. J. Ad. 7; 83 L. T. 748; 9 Asp. M. C. 155	450, 480
Mouse's Case (1608), 12 Co. Rep. 63; 1 Roll. Rep. 79; 2. Bulst. 280	246

TABLE OF CASES.

lv

	PAGE
"Moxey," Abbot, Ad. 73	18, 199
"Mud Hopper" (1879), 40 L. T. 462; 4 Asp. M. C. 103	25, 263
Mudlark, (1911) P. 116; 80 L. J. P. 117; 27 T. L. R. 385	178, 287
"Mullingar" (1872), 26 L. T. 326; 1 Asp. M. C. 252	86, 278
Mumford v. Crocker. See "Queen of the Bay."	
Munks v. Jackson, 66 Fed. Rep. 571	211
Munro v. Pilkington (1862), 31 L. J. Q. B. 81	235
"Munroe," (1893) P. 248; 70 L. T. 246; 7 Asp. M. C. 407; 1 R. 642	252
Murphy v. Palgrave (1869), 3 Mar. Law Cas. O. S. 284; 21 L. T. 209	472
Mutrie v. Binney (1887), 35 Ch. D. 614; 56 L. T. 455; 36 W. R. 131	233
"Myrtle," 44 Fed. Rep. 779	382
"Mystery," (1902) P. 115; 71 L. J. Ad. 39; 86 L. T. 359; 50 W. R. 414; 9 Asp. M. C. 281	105, 211, 242, 282, 292

N.

"N. B. Starbuck," 29 Fed. Rep. 797	126
"N. Strong," (1892) P. 105; 67 L. T. 299; 7 Asp. M. C. 194	352, 354, 355, 363, 364
"Nabob," Brown, Ad. 115	113, 457
"Nacoochee," 28 Fed. Rep. 462	358
"Nador," (1909) P. 300; 100 L. T. 1007; 78 L. J. P. 106	21, 49, 353
"Naples" (1886), 11 P. D. 124; 55 L. J. Ad. 64; 55 L. T. 584; 35 W. R. 59; 6 Asp. M. C. 30	291
"Narragansett," 20 Blatchf. 87	314, 317, 421
"Natchez," 73 Fed. Rep. 267	213
National Steam Co. v. Merry. See "Pennsylvania."	
"Nautik," (1895) P. 121; 64 L. J. Ad. 61; 11 R. 716; 72 L. T. 21; 43 W. R. 703; 7 Asp. M. C. 591	286
Neel v. Blythe, 42 Fed. Rep. 457	24
"Nellie D.," Blatchf. 245	470
Nelson v. Couch (1863), 15 C. B. N. S. 99; 33 L. J. C. P. 46; 10 Jur. N. S. 366; 8 L. T. 577; 11 W. R. 964	278
— v. Fawcett, "Resolution" and "Langton" (1789), Marsd. Ad. Cas. 332; Burrell, 332	165
"Nepoter" (1869), L. R. 2 A. & E. 375; 38 L. J. Ad. 63; 22 L. T. 177; 18 W. R. 49	251
"Neptune" (1822), 1 Hag. 227	90
"Neptune the Second" (1814), 1 Dods. Ad. 467	97, 237, 272, 462
"Nerano" and "Dromedary" (1895), 22 Ct. of Sess. Cas. 4th Ser. 237	301, 513
"Nereus," 3 Bened. 238	471
— 23 Fed. Rep. 448, 457	36
"Nessmore," 50 Fed. Rep. 616	315, 345
Netherlands Steamboat Co. v. Styles. See "Batavier."	

	PAGE
"Nevada," 16 Otto, 154	455
"Never Despair" (1884), 9 P. D. 34; 53 L. J. Ad. 30; 50 L. T. 369; 32 W. R. 559; 5 Asp. M. C. 211	277
"New Eagle" (1846), 2 W. Rob. 441; 4 Not. of Cas. 426	96
"New Ed." and "Gustav" (1863), 9 L. T. 547; 1 Mar. Law Cas. O. S. 407	322
"New Pelton," (1891) P. 258; 60 L. J. Ad. 78; 65 L. T. 494; 7 Asp. M. C. 81	269, 274, 537, 538
"New York," 40 Fed. Rep. 900	126
————— 175 U. S. Rep. 187	153
————— (keep her course), 82 Fed. Rep. 819 ...	302, 392, 394, 430
New York and Baltimore Transportation Co. v. Philadelphia and Savannah Steamship Co., "Keystone State," 22 How. 461	193
New York, &c. Mail Steamship Co. v. Rumball, 21 How. 372...7, 47, 392	
"New York Packet," 4 Lower Canada Rep. 343	242
"Newbattle" (1885), 10 P. D. 33; 54 L. J. Ad. 16; 52 L. T. 15; 33 W. R. 318; 5 Asp. M. C. 356	232, 276, 277, 294, 347
"Newholm" (1917), 86 L. J. P. 13; 33 T. L. R. 484	289
Newman v. Lacy, Seld. Ser. Admiralty, II. lxxxiv.	162
"Newport News," 83 Fed. Rep. 522	305
"Ngapoota," (1897) App. Cas. 391; 66 L. J. P. C. 88—P. C. ...	61, 411
"Niagara," 44 Fed. Rep. 775	45, 479
————— 84 Fed. Rep. 902	352
"Nichols," 7 Wall. 656	12, 304, 305, 309
Nicholson v. Mouncey (1812), 15 East, 384	109
"Nicolina" (1843), 2 W. Rob. 175	276
"Nightwatch" (1862), Lush. 542; 8 Jur. N. S. 1161; 32 L. J. Ad. 47; 7 L. T. 396; 11 W. R. 189	210
"Nimrod" (1851), 15 Jur. 1201	422, 424
"Niobe," McCowan v. Baine (insurance), (1891) A. C. 401; 65 L. T. 502; 7 Asp. M. C. 89—H. L.	193, 255
————— (tug and tow) (1888), 13 P. D. 55; 57 L. J. Ad. 33; 59 L. T. 257; 36 W. R. 812; 6 Asp. M. C. 300—H. L. ...	38, 197, 199, 201, 202, 204
Nixon v. Roberts (1860), 1 J. & H. 739; 4 L. T. 679; 30 L. J. Ch. 844; 7 Jur. N. S. 820	90, 175, 187
"No" (1853), 1 Sp. 184	274
Nobel's Explosives Co. v. Jenkins, (1896) 2 Q. B. 326; 65 L. J. Q. B. 638; 75 L. T. 163; 8 Asp. M. C. 181	249
Noble v. Wilson, "Eagle" and "Hopewell" (not reported)	163
Noden v. Ashton (not reported)	163
"Nor" (1874), 30 L. T. 576; 2 Asp. M. C. 264	12, 369, 399
"Nora Costello," 46 Fed. Rep. 869	24
"Nord Kap" and "Sandhill," (1894) App. Cas. 646	38, 408, 420
"Norge," 55 Fed. Rep. 347	391, 398
"Norma" (1876), 35 L. T. 418; 3 Asp. M. C. 272	389, 393, 395
"Normandie," 43 Fed. Rep. 151	416
————— and "Pekin." See "Pekin."	
"Normandy" (1871), L. R. 3 A. & E. 152; 39 L. J. Ad. 48; 23 L. T. 631; 18 W. R. 903	110, 184, 185

TABLE OF CASES.

lvii

	PAGE
"Normandy," (1904) P. 187; 90 L. T. 351; 73 L. J. P. 55; 9 Asp. M. C. 563	288
"North American" and "Wild Rose" (1866), 14 L. T. 68; 2 Mar. Law Cas. O. S. 319	362
— and "Tecla Carmen" (1858), Swab. 358; Lush. 79; 12 Moo. P. C. 331; 5 Jur. N. S. 659	142, 149, 272
"North Britain," (1894) P. 77; 63 L. J. Ad. 33; 70 L. T. 210; 42 W. R. 243; 7 Asp. M. C. 413—C. A.	125, 254
North of England Iron Steamship Insurance Association v. Armstrong (1870), L. R. 5 Q. B. 244; 39 L. J. Q. B. 81; 21 L. T. 822; 18 W. R. 520	258
"Northampton" (1853), 1 Sp. 152	270, 460
"Northern Indiana," 3 Blatchf. 92	359, 457
"Northumbria" (1869), L. R. 3 A. & E. 6, 24; 39 L. J. Ad. 3, 24; 21 L. T. 681; 18 W. R. 188	119, 127, 175, 187, 282
"Norway" (1865), Br. & L. 377; 12 L. T. 57; 13 W. R. 296; on app. 3 Moo. P. C. N. S. 245; 11 Jur. N. S. 892; Br. & Lush. 404; 13 L. T. 50; 13 W. R. 1085	251
Norwich Steamboat Co. v. Wright, 13 Wall. 104	185
Notara v. Henderson (1870), L. R. 5 Q. B. 346; 39 L. J. Q. B. 167; 22 L. T. 577; on app. L. R. 7 Q. B. 225; 41 L. J. Q. B. 158; 26 L. T. 442; 20 W. R. 443	124
Nothard v. Pepper (1864), 17 C. B. N. S. 39; 10 L. T. 782	271
"Notting Hill" (1884), 9 P. D. 105; 53 L. J. Ad. 56; 51 L. T. 66; 32 W. R. 764; 5 Asp. M. C. 241—Ex. Ch.	117, 132
Nouvion v. Freeman (1890), 15 App. Cas. 1; 59 L. J. Ch. 337; 62 L. T. 189	234
"Nova Scotian" and "Quebec," 2 Quebec L. R. 1	24, 421
Nugent v. Smith (1875), 1 C. P. D. 19; 45 L. J. C. P. 19; 33 L. T. 731; on app. 1 C. P. D. 423; 45 L. J. C. P. 697; 34 L. T. 827; 24 W. R. 237; 3 Asp. M. C. 198—P. C.	245, 246
"Nutmeg State," 62 Fed. Rep. 847	391, 399
"Nymph" (1857), Swab. 86	89

O.

Oakley v. Speedy (1879), 40 L. T. 881; 4 Asp. M. C. 134	76, 261
"Ohdam," 60 Fed. Rep. 637	350
"Obey" (1866), L. R. 1 A. & E. 102; 12 Jur. N. S. 817	181
Occidental and O. S. S. Co. v. Smith, 74 Fed. Rep. 261.....	10, 422, 423
Ocean Steamship Co. v. Apcar & Co. See "Arratoon Apcar."	
"Ocean Wave," Marshall v. Moran (1870), 6 Moo. P. C. N. S. 492; L. R. 3 P. C. 205; 23 L. T. 218	16, 205
"Oceanic," 61 Fed. Rep. 338	379
— (1903), 88 L. T. 303; 9 Asp. M. C. 378	355, 357
"Oceano" and "Virgo" (1878), 3 P. D. 60	384, 385, 428, 429
"Oceanus," 5 Bened. 545; on app. 12 Blatchf. 430	417, 431
"Octavia Stella" (1887), 57 L. T. 632; 6 Asp. M. C. 182	236

	PAGE
"Oder," 13 Fed. Rep. 272	340
"Odessa" (1882), 46 L. T. 77; 4 Asp. M. C. 493—C. A.	378, 541
"Ogemaw," 32 Fed. Rep. 919	211, 455
Ogle v. Barnes (1799), 8 T. R. 188	3
"Ohio," 91 Fed. Rep. 547	476
Ohrloff v. Briscoe (1866), L. R. 1 P. C. 231	246
"Okehampton," (1913) P. 173	113
"Olga" (Owners) v. SS. "Anglia" (Owners) (1905), 42 Sc. L. R. 439; 7 F. (Ct. of Sess.) 739; 12 Sc. L. T. 812	189
"Oliver," 22 Fed. Rep. 848	455, 539
"Olympia," 61 Fed. Rep. 120	22
"Olympic" v. "H.M.S. Hawke," (1913) P. 214; 83 L. J. P. 113; (1915) App. Cas. 385; 112 L. T. 49; 12 Asp. M. C. 580; 31 T. L. R. 54—H. L. (E.)	3, 20, 41, 51, 109, 392, 394, 475
Omoa Cleland Coal and Iron Co. v. Huntley (1877), 2 C. P. D. 464; 37 L. T. 184; 25 W. R. 675; 3 Asp. M. C. 501	250
O'Neil v. Sears, 2 Sprague, 52	468
"Ophelia," 44 Fed. Rep. 941	366
"Oporto," (1897) P. 249; 66 L. J. Ad. 49; affg. 75 L. T. 599; 8 Asp. M. C. 213	422
"Orange," 46 Fed. Rep. 408	366
"Oratava" and "Janet" (1839), Marsd. Ad. Cas. 337	168
"Oravia" (1905), 97 L. T. 523; 10 Asp. M. C. 436	355, 361
"Oregon" (speed), 27 Fed. Rep. 751	355
— (flare), 45 Fed. Rep. 62	345
— (flare), 51 Dav. 186	433
"Orient" (1871), 39 L. J. Ad. 8; 24 L. T. 761; 3 Mar. Law Cas. O. S. 321; on app. nom. Yeo v. Tatham, 8 Moo. P. C. N. S. 74; L. R. 3 P. C. 696; 40 L. J. Ad. 29; 24 L. T. 918; 20 W. R. 6; 1 Asp. M. C. 108	89, 97, 98, 275, 278
"Orion," (1891) P. 307; 60 L. J. Ad. 90; 65 L. T. 500; 7 Asp. M. C. 88	329, 339
"Ornen," Ct. of App. 23 Jan. 1900	394
"Orpheus" (1871), L. R. 3 A. & E. 308; 40 L. J. Ad. 24; 23 L. T. 855	91, 183
"Orwell" (1888), 13 P. D. 80; 57 L. J. Ad. 61; 59 L. T. 312; 36 W. R. 703; 6 Asp. M. C. 309	285, 447
— Ad. Div. 17th December, 1887	396, 470
"Oscar" (1864), 10 L. T. 789; 12 W. R. 872	271
"Osceola," 34 Fed. Rep. 921	129
"Osmanli" (1850), 7 Nat. of Cas. 507; 3 W. Rob. 198	271
"Otter" (1874), L. R. 4 A. & E. 203; 30 L. T. 43; 22 W. R. 557; 2 Asp. M. C. 208	42, 273, 362, 475
"Otto" and "Thorsa." See Wilson v. Currie.	
"Ovingdean Grange," (1902) P. 208; 71 L. J. Ad. 105; 87 L. T. 15 —C. A.	31, 36, 38, 541
Owen v. "Providence" (1766), Marsd. Ad. Cas. 13	95
"Owen Wallis" (1874), L. R. 4 A. & E. 175; 43 L. J. Ad. 36; 30 L. T. 41; 22 W. R. 695; 2 Asp. M. C. 206	178, 299, 328, 480
"Owl" and "Ariadne." See Little v. Burns.	
Owners of "Velasquez" v. Briggs. See "Velasquez."	

P.

	PAGE
"P. Caland," (1892) P. 191; aff. (1893) App. Cas. 207; 62 L. J. Ad. 41; 68 L. T. 469; 7 Asp. M. C. 317—H. L.	320, 326
"P. I. Nevius" and "Wide Awake," 67 Fed. Rep. 158	213
"Pacific" (1884), 9 P. D. 124; 53 L. J. Ad. 67; 51 L. T. 127; 33 W. R. 124; 5 Asp. M. C. 263	339, 341, 413, 472
"Pactolus" (1857), Swab. 173; 28 L. T. O. S. 220; 5 W. R. 167...	118
"Pacuare," (1912) P. 179; 81 L. J. P. 143; 107 L. T. 252; 12 Asp. M. C. 222—C. A.	273
Page <i>c.</i> Haslewood, Seld. Ser. Admiralty, II. lxxxiii.	159
— <i>v.</i> Defries (1865), 7 B. & S. 137	79
"Palatine" (1872), 27 L. T. 631; 1 Asp. M. C. 468.....	389, 396, 419, 470, 471
"Palermo" (1884), 9 P. D. 6; 53 L. J. Ad. 6; 49 L. T. 551; 32 W. R. 403; 5 Asp. M. C. 165	271
"Palestine" (1865), 13 W. R. 111	57
"Palinurus" (1887), 37 W. R. 266; aff. 13 P. D. 14; 57 L. J. Ad. 21; 58 L. T. 533; 36 W. R. 768; 6 Asp. M. C. 271	339
"Palmetto," 1 Biss. 140	479
Pangburn <i>v.</i> Gunn, 4 Fed. Rep. 35	466
"Panther" (1853), 1 Sp. 31	10, 421, 424
"Para," Ad. Div. 4th March, 1886	343
"Paramatta," Stockton, V. Ad. Dig. Canada, 192	373
"Parana" (1876), 1 P. D. 452; 45 L. J. Ad. 108; 35 L. T. 32; 3 Asp. M. C. 220; on app. (1877), 2 P. D. 118; 36 L. T. 388; 25 W. R. 596; 3 Asp. M. C. 399	132, 134, 293
Parke <i>c.</i> Sorrell, Seld. Ser. Admiralty, II. lxxxiv.	161
Parker <i>v.</i> North British Rail. Co. (1898), 25 Ct. of Sess. Cas. 4th Ser. 1059	109
"Parkersburg," 5 Blatchf. 247	457
"Parlement Belge" (1880), 4 P. D. 129; 48 L. J. Ad. 18; 40 L. T. 222; on app. 5 P. D. 197; 42 L. T. 273; 28 W. R. 642; 4 Asp. M. C. 234—C. A.	86, 87, 89, 97, 230, 231, 280
Parnaby <i>v.</i> Lancaster Canal Co. (1840), 11 Ad. & El. 223; 3 P. & D. 162; 9 L. J. Ex. 338—Ex. Ch.	107
Parnell <i>v.</i> Mort, Liddell & Co. (1885), 29 Ch. D. 325; 53 L. T. 186; 33 W. R. 481.	295
"Pasitheia" (1880), 5 P. D. 5	276
"Passaic," 76 Fed. Rep. 460	44
"Patience," 167 Fed. Rep. 855	196
"Patria," 92 Fed. Rep. 411	358, 439
— (1871), L. R. 3 A. & E. 436; 41 L. J. Ad. 23; 24 L. T. 849; 1 Asp. M. C. 71	91, 170
"Patriotto" and "Rival" (1860), 2 L. T. 301	458, 461
"Patroclus" (1888), 13 P. D. 54; 58 L. T. 774; 36 W. R. 928; 6 Asp. M. C. 285	341
Pearce <i>v.</i> Page, 24 How. 228	480
"Peckforton Castle" (1877), 2 P. D. 222; 47 L. J. Ad. 12; 37 L. T. 539; 26 W. R. 81; on app. 3 P. D. 11; 47 L. J. Ad. 69; 37 L. T. 816; 26 W. R. 346; 3 Asp. M. C. 533—C. A.	379, 416, 417

	PAGE
"Peerless" (1862), 6 L. T. 107	292
——— (1860), Lush. 30; 29 L. J. Ad. 49; 2 L. T. 25; on app. nom. <i>Prowse v. European, & Co. Co.</i> , 13 Moo. P. C. 484; 30 L. J. Ad. 89; 3 L. T. 125	22, 221, 464, 485
<i>Peers v. Cble, Seld. Ser. Ad. II. lxxxiv.</i>	161
"Pegasus," 19 Fed. Rep. 46	31
"Pekin," (1897) App. Cas. 532; 77 L. T. 444; 8 Asp. M. C. 367....	10, 301, 384, 385, 428
"Pelaw" (1875) (not reported)	294
"Pennland," 23 Fed. Rep. 551	47, 358
"Pennsylvania" (1870), 23 L. T. 55	19, 57, 357
——— 12 Fed. Rep. 914	75
——— <i>National Steamship Co. v. Merry</i> (1870), 23 L. T. 55; 3 Mar. Law Cas. O. S. 477—P. C.	234
——— 19 Wall. 125; 31 L. T. 103	356
<i>Penny v. Wimbledon Urban Council</i> , (1898) 2 Q. B. 212; 78 L. T. 748; 67 L. J. Q. B. 754	105
"Pensher" (1857), Swab. 211	120
"Pepperell" (1855), Swab. 12	364
"Peri" (1863), 32 L. J. Ad. 46; 8 Jur. N. S. 1230; 11 W. R. 44....	291
"Perim," Ad. Div. 10th Nov. 1886	269, 425
<i>Perkins v. Gingell</i> (1886), 50 J. P. 277	546
"Perkiomen," 27 Fed. Rep. 573	351
"Perth" (1838), 3 Hag. 414	362
"Peru" (1857), Britch. Ad. Dig. 3rd ed. 1412	15
"Peshawur" (1883), 8 P. D. 32; 52 L. J. Ad. 30; 48 L. T. 796; 31 W. R. 660; 5 Asp. M. C. 89	233
"Peshtigo," 25 Fed. Rep. 488	146, 358
"Pet" (1869), 20 L. T. 961; 17 W. R. 899	278
"Peter Benoit" (1915), 84 L. J. P. 87—C. A.; aff. 85 L. J. P. 12; 114 L. T. 147; 13 Asp. M. C. 203; 60 S. J. 88; 32 T. L. R. 124— H. L.	147, 528
"Petersfield" and "Judith Randolph," <i>Wildman o. Blake</i> (1789), Marsd. Ad. Cas. 332	143, 163
<i>Petley v. Catto.</i> See "Christina."	
"Petrel," (1893) P. 320; 62 L. J. Ad. 92; 70 L. T. 417; 7 Asp. M. C. 434	112, 115
<i>Petrie v. Owners of "Rostrevor,"</i> (1898) 2 Ir. 556	287
<i>Pettie v. Boston Towboat Co.</i> , 49 Fed. Rep. 464	124
"Phebe," Ware's Rep. 263	78, 84, 170
<i>Phelps, James & Co. v. Hill</i> , (1891) 1 Q. B. 605; 60 L. J. Q. B. 382; 64 L. T. 610; 7 Asp. M. C. 42	249
"Philadelphia," (1917) P. 101	119, 120
"Philadelphian," (1900) P. 262; 69 L. J. Ad. 31; 81 L. T. 728; 48 W. R. 431; 9 Asp. M. C. 72	66, 343
<i>Phillips v. Baillie</i> (1784), 3 Dougl. 374	251
——— <i>v. Homfray</i> (1883), 24 Ch. D. 439; 52 L. J. Ch. 833; 49 L. T. 5; 32 W. R. 6	89
"Philotaxe" (1877), 37 L. T. 540; 3 Asp. M. C. 512.....	315, 387, 416, 461, 462

TABLE OF CASES.

lxi

	PAGE
"Picton," 4 Duval (Canada), 648	221
—— (1910) P. 46; 79 L. J. P. 53; 101 L. T. 917; 11 Asp.	
M. C. 358	329, 337, 338, 339
"Pierrepont," 42 Fed. Rep. 687	217
"Pieve Superiore" (1874), L. R. 4 A. & E. 170; 43 L. J. Ad. 1; 29 L. T. 702; 22 W. R. 416; on app. L. R. 5 P. C. 482; 43 L. J. Ad. 20; 30 L. T. 887; 22 W. R. 777; 2 Asp. M. C. 319...91, 251	
"Pilgrim," 57 Fed. Rep. 670.....	481
Pilk v. Venore (1829), 1 Molloy (ed. 1769), 359	76
"Pilot," 20 Fed. Rep. 860	333
Pink v. Fleming (1890), 25 Q. B. D. 396; 59 L. J. Q. B. 559; 63 L. T. 413; 6 Asp. M. C. 554—C. A.	132
"Pitgavenny," (1910) P. 215; 79 L. J. P. 65; 103 L. T. 47; 26 T. L. R. 473	15, 313, 320, 337, 338, 431, 444
"Pladda" (1876), 2 P. D. 34; 46 L. J. Ad. 61	22, 24, 455, 465
"Planet," Brown, Ad. 124	460
"Plato" and "Perseverance" (1865), Holt, 262	470, 476
"Pleiades" and "Jane," (1891) App. Cas. 259; 60 L. J. P. C. 59; 65 L. T. 169; 7 Asp. M. C. 41	270
Pluckwell v. Wilson. (1832), 5 Car. & P. 375	426
Plummer v. Wildman (1815), 3 M. & S. 482	260, 264
—— v. Woodburn (1825), 4 B. & C. 625	233
Pollok v. M'Alpin. See "Lochlibo."	
"Polynésien," (1910) P. 28; 79 L. J. P. 45; 101 L. T. 749; 11 Asp. M. C. 354	42
Pontifex v. Midland Ry. Co. (1878), 3 Q. B. D. 23; 47 L. J. Q. B. 28; 37 L. T. 403; 26 W. R. 209	248
Pooty v. Rudd, Seld. Ser. Ad. II. lxxxiv.	161
"Port Victoria," (1902) P. 25; 71 L. J. Ad. 36; 86 L. T. 804; 9 Asp. M. C. 314	39, 91
Portevant v. "Bella Donna," Newb. Ad. 510	460
"Portia," 64 Fed. Rep. 811	31, 153
"Potomac," 8 Wall. 590	272, 390
—— 15 Otto, 630; 13 Fed. Rep. 399	258, 259
Potter c. Keeble, Seld. Ser. Ad. II. lxxxiv.	162
"Pottsville," 12 Fed. Rep. 631	357
"Poughkeepsie," 102 Fed. Rep. 494	93
Poulton v. London & South Western Ry. Co. (1867), L. R. 2 Q. B. 534; 36 L. J. Q. B. 294; 17 L. T. 841; 16 W. R. 309	80
Powell c. Trevyne, Seld. Ser. Ad. II. lxxxiv.	160
"Premier," 51 Fed. Rep. 766	33
"Pres. Briarly," 24 Fed. Rep. 478	217
"President Lincoln," (1911) P. 248; 81 L. J. P. 5; 105 L. T. 442; 12 Asp. M. C. 41	307, 367
Price v. Dewhurst (1837), 8 Sim. 279	234
Priestley v. Fowler (1837), 3 M. & W. 1	115, 209
"Prince Leopold de Belgique," (1909) P. 103; 100 L. T. 201; 78 L. J. P. 57; 7 Asp. M. C. 203	423, 425
"Princess" (1886), 52 L. T. 932; 5 Asp. M. C. 451	126
"Princesse Clémentine," (1897) P. 18; 66 L. J. Ad. 23; 75 L. T. 695; 8 Asp. M. C. 222	267

	PAGE
"Princesse Marie José" (1913), 12 Asp. M. C. 360; 109 L. T. 326; 29 T. L. R. 678	95, 279, 296
"Princeton" (1878), 3 P. D. 90; 47 L. J. Ad. 33; 38 L. T. 260; 3 Asp. M. C. 562	460
61 Fed. Rep. 116	351
"Prins Hendrick," (1899) P. 177; 68 L. J. Ad. 86; 80 L. T. 838; 8 Asp. M. C. 548	241
"Printz Frederick" (1817), 2 Dods. 451	110
"Priscilla" (1870), L. R. 3 A. & E. 125; 23 L. T. 566; 1 Asp. M. C. 468	374, 375, 419, 445, 470
"Privateer" (1881), 7 L. R. Ir. 105	368, 376
"Protector" (1840), 1 W. Rob. 45	97
"Providence," 98 Fed. Rep. 133	75, 130
"Public Opinion" (1832), 2 Hag. 398	221
Purkis v. Flower (1874), L. R. 9 Q. B. 114; 43 L. J. Q. B. 33; 30 L. T. 40; 22 W. R. 239; 2 Asp. M. C. 226	93, 287
"Pyrus" and "Smales" (1816), 2 Mar. Law Cas. O. S. 288; Holt, 40	12

Q.

Quarman v. Burnett (1840), 6 M. & W. 499	176
"Quebec" and "Charles Chaloner," 19 Lower Canada Jurist, 201... 59, 241	421
1 Quebec L. R. 1	154
"Queen," 40 Fed. Rep. 694	
v. &c. See Reg. v. &c.	
"Queen Elizabeth," 100 Fed. Rep. 874	372
"Queen of the East" and "Calypso," 4 Bened. 103	460
"Queen of the Orwell" (1863), 7 L. T. 839; 1 Mar. Law Cas. O. S. 300; 11 W. R. 499	73
"Queen Victoria" (1891), 7 Asp. M. C. 9; 64 L. T. 520	390, 462
"Quickstep," 9 Wall. 665	216
(tug and tow) (1890), 15 P. D. 196; 59 L. J. Q. B. 65; 63 L. T. 713; 6 Asp. M. C. 603	84, 197, 198, 199

R.

"R. B. Forbes," 1 Sprague, 328	211
"R. C. Veit," 56 Fed. Rep. 122	213
"R. L. Alston" (1883), 7 P. D. 49; 46 L. T. 208; 30 W. R. 707; 4 Asp. M. C. 509; on app. 8 P. D. 5; 48 L. T. 469; 5 Asp. M. C. 43—C. A.	142, 481, 529
"R. R. Kirkland," 48 Fed. Rep. 760	46, 388
"Racine," (1906) P. 273; 95 L. T. 597; 75 L. J. P. 83; 10 Asp. M. C. 300	119, 120, 127, 131
Radley v. London & North Western Rail. Co. (1876), 1 App. Cas. 754; 46 L. J. Ex. D. 573; 35 L. T. 637; 25 W. R. 147	34, 35

TABLE OF CASES.

lxiii

	PAGE
"Radnorshire" (1880), 5 P. D. 172; 49 L. J. Ad. 48; 43 L. T. 319; 29 W. R. 476; 4 Asp. M. C. 338	273
"Ragnhild," (1911) P. 254; 81 L. J. P. 1; 105 L. T. 446; 12 Asp. M. C. 44	337, 338
Raisin v. Mitchell (1891), 9 C. & P. 613	40
"Raithwaite Hall" (1874), 30 L. T. 233; 2 Asp. M. C. 210	6, 485
"Rajah" (1872), L. R. 3 A. & E. 539; 41 L. J. Ad. 97; 27 L. T. 102; 21 W. R. 14; 1 Asp. M. C. 403	184
Rajah of Cochin (1859), Swab. 473	297
"Raleigh" and "Niagara," 44 Fed. Rep. 781	212, 214, 350, 353
"Ralph Creyke" (1886), 55 L. T. 155; 6 Asp. M. C. 19	474, 475, 480, 515
Ramsay v. Quinn (1874), Ir. Rep. 8 C. L. 322	115
Randal v. Cochrane (1743), 1 Ves. Sen. 98	257
"Ranger." See "Cologne" and "Ranger."	
Rankine v. Raschen (1877), 4 Ct. of Sess. Cas. 4th Ser. 725	191
"Ranza," Ship. Gaz., 13th December, 1898; 79 L. J. P. 21, n.....	394
"Ratata," Preston Corporation v. Biornstad, (1898) App. Cas. 513; 67 L. J. Ad. 73; 78 L. T. 797; 8 Asp. M. C. 427	16, 84, 108, 201, 202, 244
"Ravenna," (1918) P. 26	384, 386, 423
Rayne, <i>Ex parte</i> (1841), 1 Gale & Dav. 374; 1 Q. B. 982; 10 L. J. Q. B. 354;	187
"Reading," (1908) P. 162; 77 L. J. P. 71; 90 L. T. 590; 11 Asp. M. C. 35	293
"Reba," 22 Fed. Rep. 546	126
"Rebecca," Ware's Rep. 188	78, 170
"Rebecca Shepherd," 33 Fed. Rep. 926	23
"Receipta" (prohibition; altering judgment), (1893) P. 255; 62 L. J. Ad. 18; 69 L. T. 252; 41 W. R. 561; 7 Asp. M. C. 359	292
——— (limitation) (1889), 14 P. D. 131; 58 L. J. Ad. 70; 61 L. T. 698; 6 Asp. M. C. 433	189
"Red Cross" (1907), 97 L. T. 610; 10 Asp. M. C. 521	384, 386
Redhead v. Midland Rail. Co. (1877), L. R. 2 Q. B. 412; on app. <i>ibid.</i> 4 Q. B. 379	246
Redpath v. Allan. See "Hibernian."	
Reed v. Welford (1726), Marsd. Ad. Cas. 308	163
Reg. v. Anderson (1868), L. R. 1 C. C. R. 161; 38 L. J. M. C. 12; 19 L. T. 400; 17 W. R. 208	220, 262
—— v. Barrett (1846), 2 C. & K. 343	261
—— v. Carr (1882), 10 Q. B. D. 76; 52 L. J. M. C. 12; 47 L. T. 450; 31 W. R. 121; 4 Asp. M. C. 604	220, 262
—— v. City of London Court Judge (1881), 8 Q. B. D. 609; 51 L. J. Q. B. 305; 30 W. R. 566	221
—— v. Haines (1847), 2 C. & K. 368	261
—— v. Judge of City of London Court, (1892) 1 Q. B. 273; 61 L. J. Q. B. 337; 66 L. T. 135; 40 W. R. 215	277
—— v. Keyn (1876), 2 Ex. D. 63; 46 L. J. M. C. 17.....	74, 80, 219, 222, 262
—— v. Lewis (1857), 1 D. & B. C. C. 182	262

	PAGE
Reg. v. Menham (1858), 1 F. & F. 369	262
— v. Polwart (1841), 1 Q. B. 818	86
— v. Sattler (1858), D. & B. C. C. 525	262
— v. Seberg (1870), L. R. 1 C. C. R. 264; 39 L. J. M. C. 133 (nom. Reg. v. Von Seberg); 22 L. T. 523 (nom. Reg. v. Sven Seberg)	262
— v. Spence (1846), 1 Cox, C. C. 352	261
— v. Taylor (1840), 9 Car. & P. 672	261
— v. Williams (1884), 9 App. Cas. 418; 53 L. J. P. C. 64; 51 L. T. 546	107
“Regina del Mare” (1864), Br. & L. 315	259
“Reginald” (1907), 97 L. T. 608; 10 Asp. M. C. 519	332
Reigall v. G. C. R. Co. (1909), 14 Com. Cas. 239	249
“Reiher” (1881), 45 L. T. 767; 4 Asp. M. C. 478	340, 341
“Reinbeck” (1889), 60 L. T. 209; 6 Asp. M. C. 366	233
Reischer v. Borwick, (1894) 2 Q. B. 548; 63 L. J. Q. B. 753; 71 L. T. 238; 7 Asp. M. C. 493—C. A.	122, 252
“Relief,” 63 Fed. Rep. 169	397
— Olcott, Ad. 104	366
Reney v. Magistrates of Kirkcudbright, (1892) App. Cas. 264; 61 L. J. P. C. 23; 67 L. T. 474; 7 Asp. M. C. 221—H. L.	105, 108, 243
Rennen c. Humble, Ad. Ct. Ass. Book, 9th May, 1698, 26th May, 1690	163
“Renovator,” 30 Fed. Rep. 194	471
“Rescue,” 2 Sprague, 16	211
“Resolution” (1889), 60 L. T. 430; 6 Asp. M. C. 363 ...	309, 357, 358, 359, 362
— and “Langton” (1789), Nelson c. Fawcett, Marsd. Ad. Cas. 332	53
“Retriever” and “Queen” (1868), 17 L. T. 329; 2 Mar. Law Cas. O. S. 555	263
Rex v. Allen (1835), 7 Car. & P. 153	261
— v. Collector of Customs (1813), 2 M. & S. 223	114
— v. Green (1835), 7 Car. & P. 156	261
— v. Watts (1798), 2 Esp. 675	103
“Rhode Island,” Olcott, Ad. 505; 1 Blatchf. 363	417
— 17 Fed. Rep. 554	358
“Rhondda,” Scicluna v. Stevenson (1883), 8 App. Cas. 549; 49 L. T. 210; 5 Asp. M. C. 114	404, 422, 475
“Rhosina” (1885), 10 P. D. 131; 54 L. J. Ad. 72; 53 L. T. 30; 33 W. R. 794; 5 Asp. M. C. 460	105, 107, 244
“Richmond” and “E. Heipershausen,” 63 Fed. Rep. 1020.....	33, 213, 455
“Rieher” (1883), 2 Pr. Ad. Dig. 1747	119
“Rievaulx Abbey” (1911), 11 Asp. M. C. 427; 102 L. T. 864	268
“Rigaud,” 11 Quebec L. R. 382	455
“Rigel,” (1912) P. 99; 81 L. J. P. 86; W. C. Rep. 351; 106 L. T. 648; 12 Asp. M. C. 192; 28 T. L. R. 251	116, 132, 281
“Rigborgs Minde” (1883), 8 P. D. 132; 52 L. J. Ad. 74; 49 L. T. 232; 5 Asp. M. C. 123—C. A.	102, 151, 290, 293

TABLE OF CASES.

lxv

	PAGE
"Rijnstroom" (1899), 80 L. T. 422; 8 Asp. M. C. 538	293, 295
Rio Grande do Sul Steamship Co., <i>In re</i> (1877), 5 Ch. D. 282; 46 L. J. Ch. 277; 36 L. T. 603; 26 W. R. 328; 3 Asp. M. C. 424— C. A.	89, 94
"Ripon" (1885), 10 P. D. 65; 54 L. J. Ad. 56; 52 L. T. 438; 33 W. R. 659; 5 Asp. M. C. 365	318
"Ripon City," (1897) P. 226; 66 L. J. Ad. 110; 77 L. T. 98; 8 Asp. M. C. 304	86, 89, 97
"Risca," Ad. Div. 25th March, 1886	271
"Risoluto" (1883), 8 P. D. 109; 52 L. J. Ad. 46; 48 L. T. 109; 31 W. R. 657; 5 Asp. M. C. 93	131
"River Derwent" (1891), 64 L. T. 509; 6 Asp. M. C. 467; 7 Asp. M. C. 37—H. L.	274, 485, 541, 542
"River Lagan" (1886), 57 L. J. Ad. 28; 55 L. T. 773; 6 Asp. M. C. 281	211, 282, 292
River Wear Commissioners v. Adamson (1877), 1 Q. B. D. 546; 29 L. T. 530; 22 W. R. 47; 3 Asp. M. C. 242; on app. 2 App. Cas. 743; 47 L. J. Q. B. 193; 37 L. T. 543; 26 W. R. 217; 3 Asp. M. C. 521	78, 82, 83, 85, 93, 98
"Riversdale," 53 Fed. Rep. 236	22, 458
"Roanoke," (1908) P. 231; 99 L. T. 78; 77 L. J. P. 115.....	384, 391, 393, 395, 446
"Rob Roy" (1849), 3 W. Rob. 190	14, 316
"Robert," Ad. Ct. 9th June, 1818	168
"Robert and Ann" and "Lloyd's" (1864), Holt, 55	338, 454
"Robert Burnett," 46 Fed. Rep. 415	213
"Robert Dixon" (1879), 40 L. T. 333; 4 P. D. 121; 27 W. R. 736; 4 Asp. M. C. 95; on app. 5 P. D. 54; 42 L. T. 344; 28 W. R. 716; 4 Asp. M. C. 246	203, 204, 206
"Robert H. Rathbun," 38 Fed. Rep. 549	374
Robertson v. Amazon Tug and Lighterage Co. (1881), 4 Asp. M. C. 496; 51 L. J. Q. B. 68; 7 Q. B. D. 58; 46 L. T. 146; 30 W. R. 308. 203	
Robinson v. Detroit, &c. Steam Nav. Co., 73 Fed. Rep. 883	420
"Rockaway," 19 Fed. Rep. 449	46, 468
Rockett v. Chippendale, (1891) 2 Q. B. 293; 60 L. J. Q. B. 782; 64 L. T. 641	295
"Roecliff" (1868), L. R. 2 A. & E. 363; 38 L. J. Ad. 56; 20 L. T. 586; 17 W. R. 745	90
Rolles v. Newell (1890), 25 Q. B. D. 335; 59 L. J. Q. B. 423; 63 L. T. 384; 39 W. R. 96; 6 Asp. M. C. 563	546
"Romance," (1901) P. 15; 70 L. J. Ad. 1; 83 L. T. 488; 9 Asp. M. C. 149	320, 324, 342
"Rona" (1882), 7 P. D. 247; 51 L. J. Ad. 65; 46 L. T. 601; 30 W. R. 614; 4 Asp. M. C. 520	307
— and "Ava" (1874), 29 L. T. 781; 2 Asp. M. C. 182	142, 145, 316, 365, 382, 413
"Rondane" (1900), 69 L. J. Ad. 114; 82 L. T. 828; 9 Asp. M. C. 106	11, 59, 359
"Rosalia," (1912) P. 109; 81 L. J. P. 79; 106 L. T. 351; 12 Asp. M. C. 166; 28 T. L. R. 287	148, 290

	PAGE
"Rosalie" (1880), 5 P. D. 245; 50 L. J. Ad. 3; 44 L. T. 32; 4 Asp. M. C. 384	42, 320, 372, 373, 397, 438
"Rose" (1843), 2 W. Rob. 1	399, 413
Rose v. Miles (1816), 4 M. & S. 101	127
"Rose Culkin," 52 Fed. Rep. 328	194, 388
"Rose of England" (1888), 59 L. T. 262; 6 Asp. M. C. 304	480, 543
"Rosetta" (1888), 59 L. T. 342; 6 Asp. M. C. 310	353, 359, 410, 411
"Roslyn," 22 Fed. Rep. 687	42
Rothwell c. Lucas, Seld. Ser. Ad. II. lxxxiii.	159
"Rougemont," (1893) P. 275; 62 L. J. Ad. 121; 70 L. T. 420; 1 R. 658; 7 Asp. M. C. 437	277
Royal Mail S.S. Co. v. Macintyre (1911), 16 Com. Cas. 231	246
Ruabon Steamship Co. v. London Assurance, (1900) App. Cas. 6; 69 L. J. Q. B. 86; 81 L. T. 585; 43 W. R. 225; 8 Asp. M. C. 369—	
H. L.	119
"Ruby" (liens), (1898) P. 52; 67 L. J. Ad. 28; 78 L. T. 267; 8 Asp. M. C. 389	93
"Ruby Queen" (1860), Lush. 236	98, 464
Ruckton c. Lambton, Seld. Ser. Admiralty, II. lxxxiii.	159
Rundell v. Compagnie Générale Transatlantique, 94 Fed. Rep. 366.	232
Russell c. Joad, Seld. Ser. Admiralty, II. lxxxiv.	162
"Russia," 3 Bened. 471; 21 L. T. 440	475
Rutter c. Ribbattira, Seld. Ser. Admiralty, II. lxxxiii.	159

S.

"S. Anderson," 27 Fed. Rep. 392	433
"S. Shaw," 6 Fed. Rep. 93	33
"S. S. Wilhelm," 59 Fed. Rep. 169	217
"S. W. Morris," 59 Fed. Rep. 616	216
"Saale," 63 Fed. Rep. 478	358
"Sagua" v. "Grace," 42 Fed. Rep. 461	204
"Saint Aubin," (1907) P. 60; 95 L. T. 586; 76 L. J. P. 25; 10 Asp. M. C. 298	315, 456, 535, 542, 545
"Saint Audries" (1886), 54 L. T. 278; 5 Asp. M. C. 552	385
"Saint Cloud" (1863), Br. & L. 4; 8 L. T. 54	251, 285
"Saint Cyran" and "Henry" (1864), 12 W. R. 1014	15, 443
Saint John c. Grant, Seld. Ser. Admiralty, II. lxxxiii.	159
"Saint John's," 42 Fed. Rep. 75	452
"Saint Lawrence," 19 Fed. Rep. 323	460
"Saint Olaf" (1867), L. R. 2 A. & E. 360; 33 L. J. Ad. 41; 20 L. T. 758; 17 W. R. 743	94
"Saint Paul," (1908) P. 320; 100 L. T. 184; 78 L. J. P. 1; 11 Asp. M. C. 152; on app., (1909) P. 43	5, 352, 354
"Saltburn," (1892) P. 333; 69 L. T. 88; 1 R. 543; 7 Asp. M. C. 325	295
Salt Union v. Wood, (1893) 1 Q. B. 370; 62 L. J. M. C. 75; 68 L. T. 92; 57 J. P. 201; 41 W. R. 301; 7 Asp. M. C. 281; 6 R. 702.....	301
"Sam Gaty," 8 Bissel, 190	126

TABLE OF CASES.

lxvii

	PAGE
"Sammie," 36 Fed. Rep. 568	475
"Sampson," 4 Blatchf. 23	262
"Samuel H. Crawford," 6 Fed. Rep. 906	321
"Sandhill." See Nord Kap.	
"Sans Pareil, E.M.S.," (1900) P. 267; 69 L. J. Ad. 127; 82 L. T. 606; 9 Asp. M. C. 78...12, 15, 31, 35, 66, 75, 109, 347, 439, 440, 443, 451	
"Sapphire," 11 Wall. 164	467
———— 18 Wall. 51	149
———— and "Girdleness," Ad. Div. Feb. 1884	63
"Sara," (1888), 14 App. Cas. 239; 58 L. J. Ad. 57; 61 L. T. 26; 38 W. R. 129; 6 Asp. M. C. 413—H. L.	92
"Saracen" (1847), 2 W. Rob. 451; on app. nom. Bernard v. Hyne, 6 Moo. P. C. 56; 11 Jur. 253; 4 Not. of Cas. 493	93, 94, 96
"Saragossa" (1892), 69 L. T. 664; 7 Asp. M. C. 289—H. L. 392, 393, 406, 418, 419, 436	
"Sarah" (1862), Lush. 549	92, 286
"Sardinian," Ad. Div. 9th Dec. 1886	239
"Sargasso," (1912) P. 192; 82 L. J. P. 9; 107 L. T. 204; 12 Asp. M. C. 202; 28 T. L. R. 414	51, 324, 351, 356
"Satanita," (1897) App. Cas. 59; 66 L. J. Ad. 1; 75 L. T. 337; 8 Asp. M. C. 190	180
"Saucy Lass" and "Bolderaa" (1866), Holt, 205	396
"Savernake" (costs) (1880), 5 P. D. 163; 43 L. J. Ad. 71; 23 W. R. 123; 5 Asp. M. C. 34, n.	292, 293
"Saxonia" (1862), Lush. 410; 15 Moo. P. C. 262; 31 L. J. Ad. 201; 6 L. T. 6; 8 Jur. N. S. 315; 10 W. R. 431	219, 226, 228, 300, 314, 315, 342
———— (1865), 2 Mar. Law Cas. O. S. 417; 15 L. T. 113	469
Scaramanga v. Marquand (1885), 53 L. T. 810; 5 Asp. M. C. 506—C. A.	250, 257, 264
Scaramanga v. Stamp (1880), 5 C. P. D. 295; 43 L. J. Q. B. 674; 42 L. T. 840; 28 W. R. 691; 4 Asp. M. C. 295	249
"Schwalbe" (1859), Swab. 521	268, 272
"Schwan" (1889) (Thames Rules), 61 L. T. 308; 6 Asp. M. C. 409... 541, 542	
———— and "Albano," (1892) P. 419; 69 L. T. 34; 7 Asp. M. C. 347—C. A.	19, 20, 185
"Scioto," Davis, 359	457
"Scotia" (1890), 63 L. T. 324; 6 Asp. M. C. 541.....27, 124, 146, 456, 458, 466	
———— 14 Wall. 170	14, 47, 302, 393
Scott v. Cornell Steamboat Co., 59 Fed. Rep. 638	217
— v. London & St. Katherine's Dock Co. (1863), 3 H. & C. 596... 45	
— v. Scott (1817), 2 Stark. 438	32
— v. Seymour (1862), 1 H. & C. 219	233
"Scout" (1871), L. R. 3 A. & E. 512; 41 L. J. Ad. 42; 26 L. T. 371; 20 W. R. 617; 1 Asp. M. C. 258	99
Scull v. Raymond, 18 Fed. Rep. 547	89
"Sea Gull," 23 Wall. 165	12

	PAGE
Sea Insurance Co. v. Haddan (1884), 13 Q. B. D. 706; 53 L. J. Q. B. 252; 50 L. T. 657; 32 W. R. 841; 5 Asp. M. C. 230—C. A.	259
"Sea Nymph" (1860), Lush. 23	469
"Sea Nymph of Chester" (1864), Holt, 34	316
"Sea Spray," (1907) P. 133; 96 L. T. 792; 76 L. J. P. 48	265
"Seacaucus," 34 Fed. Rep. 68	316
"The Seacombe" and "The Devonshire," (1912) P. 21; 81 L. J. P. 36; 106 L. T. 241; 28 T. L. R. 107; 56 Sol. Jo. 140; 12 Asp. M. C. 137; aff., (1912) App. Cas. 634; 81 L. J. P. 94; 107 L. T. 179; 28 T. L. R. 551; 57 Sol. Jo. 10	268
Seagars c. "Haddock," Seld. Ser. Admiralty, II. lxxxiii.	160
"Seaton" (1883), 9 P. D. 1; 53 L. J. Ad. 15; 49 L. T. 747; 32 W. R. 600; 6 Asp. M. C. 191.....12, 39, 307, 309, 370, 379, 383,	420
Seecombe v. Wood (1840), 2 Moo. & Rob. 290	17
"Secret" (1872) (anchoring), 26 L. T. 670; 1 Asp. M. C. 318.....	22, 459, 462
Secretary of State for India v. Hewitt (1888), 6 Asp. M. C. 384; 60 L. T. 334	267
Sedgworth v. Overend (1797), 7 T. R. 279	113
"Seine" (1859), Swab. 411; 5 Jur. N. S. 298	79, 227, 422
"Selina" (1842), 2 Not. of Cas. 18	94
"Senator D. C. Chase," 46 Fed. Rep. 874	49
"Seneca," 47 Fed. Rep. 87	47
"Seringapatam" (division of loss) (1849), 3 W. Rob. 38; 5 Not. of Cas. 61	142, 143, 149, 370
"Servia," 42 Davis, 144	8, 480
Seward v. Owners of "Vera Cruz." See "Vera Cruz" (No. 2).	
"Seymolicus," (1909), P. 109; 100 L. T. 382; 78 L. J. P. 52; 11 Asp. M. C. 206	423
"Shakkeborg," (1911). See note to "The Umsinga," (1911) P. 234, at p. 245	455
"Shannon" (1842), 1 W. Rob. 463; 7 Jur. 380	461
Sharp v. Powell (1872), L. R. 7 C. P. 253; 41 L. J. C. P. 95; 26 L. T. 436; 20 W. R. 584	28
Sharpsburg Sands Co. v. Monongahela River Co., 145 Fed. Rep. 424	456
Shaw, Savill & Albion Co. v. Timaru Harbour Board (1889), 15 App. Cas. 429; 59 L. J. C. P. 77; 62 L. T. 913; 6 Asp. M. C. 521—P. C.	109, 244
Shelbourne v. Law Investment Corporation, (1898) 2 Q. B. 626; 67 L. J. Q. B. 944; 79 L. T. 278; 8 Asp. M. C. 445; 3 Com. Cas. 304	252
Sherman v. Mott, 5 Bened. 372	24
Shersby v. Hibbert. See "Duke of Manchester."	
Shields v. Mayor, 18 Fed. Rep. 748	344
"Shubert" v. "Einari," 45 Fed. Rep. 497	211
"Sicilian Prince," 128 Fed. Rep. 133	421
Sills v. Brown (1840), 9 Car. & P. 601	27, 273
"Simla" and "City of Lucknow," Ad. Div. March, 1884	314, 345

	PAGE
<i>Simpson v. Blues</i> , "Madge Wildfire" (1872), L. R. 7 P. C. 290; 41 L. J. C. P. 121; 26 L. T. 697; 20 W. R. 680; 1 Asp. M. C. 326...	280
—— <i>v. Fogo</i> (1860), 1 H. & M. 195; 32 L. J. Ch. 249; 9 Jur. N. S. 403; 8 L. T. 61; 11 W. R. 418	234
—— <i>v. Thompson</i> (1877), 3 App. Cas. 279; 38 L. T. 1; 3 Asp. M. C. 567—H. L.	78, 87, 114, 251, 252, 259, 260
"Singapore" and "Hebe" (1866), 4 Moo. P. C. N. S. 271; L. R. 1 P. C. 378	271, 369, 371, 376, 395
"Sinquasi" (1880), 5 P. D. 241; 50 L. J. Ad. 5; 43 L. T. 768; 4 Asp. M. C. 383	196, 197, 201, 202
<i>Sir John Jackson, Limtd. v. Owners of S.S. "Blanche."</i> See "Steam Hopper, No. 66."	
"Sir Robert Peel" (1880), 43 L. T. 364; 4 Asp. M. C. 321—C. A.	274
"Siren," 7 Wall. 152	109
"Sisters" (admitting liability) (1876), 32 L. T. 837; 2 Asp. M. C. 589	191
—— (1876) (damages; no collision; appeal), 1 P. D. 117; 45 L. J. Ad. 39; 34 L. T. 338; 24 W. R. 412; 3 Asp. M. C. 122—C. A.	12, 13, 18, 20, 38, 41, 85, 91, 199
—— (1876), 1 P. D. 281; 35 L. T. 36; 3 Asp. M. C. 224	283
"Six Sisters," (1900) P. 302; 69 L. J. Ad. 139	543
"Skerryvore," Ad. Div. 19th Aug. 1886	541
"Skipsea," (1905) P. 32; 93 L. T. 181; 74 L. J. P. 34; 10 Asp. M. C. 91	547
"Skrim" (1914), T. L. R. 555	338
<i>Slaney c. Hopwood</i> , Seld. Ser. Admiralty, II. lxxxiv.	161
<i>Slattery's Case</i> . See <i>Dublin, Wicklow, and Wexford Rail. Co. v. Slattery</i> .	
<i>Slyfield v. Penfold</i> , 66 Fed. Rep. 362	27, 40
<i>Smith, In re</i> , "City of Mecca" (1876), 1 P. D. 300; 45 L. J. Ad. 92; 35 L. T. 380; 24 W. R. 903; 3 Asp. M. C. 259—C. A.	220, 266
—— <i>v. Bailey</i> , (1891) 2 Q. B. 403	78
—— <i>v. Baker</i> , (1891) App. Cas. 325; 60 L. J. Q. B. 683; 65 L. T. 467; 40 W. R. 392	45
—— <i>v. Brown</i> (1871), L. R. 6 Q. B. 729; 40 L. J. Q. B. 214; 24 L. T. 808; 19 W. R. 1165; 1 Asp. M. C. 56	280
—— <i>v. Condry</i> , 1 How. 28	132, 242
—— <i>v. "Creole" and "Sampson,"</i> 2 Wall. Jun. C. C. R. 485	211, 242
—— <i>v. Dobson</i> (1841), 3 M. & G. 59; 3 Scott, N. R. 336	40, 481
—— <i>v. Kirby</i> (1875), 1 Q. B. D. 131; 24 W. R. 207	187
—— <i>v. Nugent</i> . See <i>Nugent v. Smith</i> .	
—— <i>v. Saint Lawrence Tow Boat Co.</i> (1874), L. R. 5 P. C. 308; 28 L. T. 885; 21 W. R. 569; 2 Asp. M. C. 41	201, 206, 262
—— <i>v. Scott</i> (1811), 4 Taunt. 126	251
—— <i>v. South Eastern Rail. Co.</i> , (1896) 1 Q. B. 178; 65 L. J. Q. B. 219; 73 L. T. 614; 44 W. R. 291	46
—— <i>v. Steele</i> (1875), L. R. 10 Q. B. 125; 44 L. J. Q. B. 60; 32 L. T. 195; 25 W. R. 388; 2 Asp. M. C. 487	115

	PAGE
Smith v. Voss (1858), 2 H. & N. 97; 26 L. J. Ex. 233; 5 W. R. 534...	76, 423
— v. Wilson, (1895) App. Cas. 579; 65 L. J. C. P. 66; 75 L. T. 81; 8 Asp. M. C. 196	103
"Smyrna" and "Vrouw Maria" (1801) (not reported)	220
— (1860), mentioned Lush. 385	380
— (1864), 2 Moo. P. C. N. S. 435; 10 Jur. N. S. 977; 11 L. T. 74; 2 Mar. Law Cas. O. S. 93	355, 472, 485, 486, 488
"Snark," (1900) P. 105; 69 L. J. Ad. 41; 82 L. T. 42; 9 Asp. M. C. 50	104, 105
Sneddall v. Leigh, Seld. Ser. Admiralty, II. lxxxiii.	159
Sneesby v. Lancashire and Yorkshire Rail. Co. (1874), L. R. 9 Q. B. 263	28
Snelling v. Pulling (1885), 29 Ch. D. 85; 52 L. T. 335; 33 W. R. 449	295
"Solis" (1885), 10 P. D. 62; 54 L. J. Ad. 52; 52 L. T. 440; 33 W. R. 659; 5 Asp. M. C. 368	267
"Solway" (1885), 10 P. D. 137; 54 L. J. Ad. 83; 53 L. T. 680; 34 W. R. 232; 5 Asp. M. C. 482	272
"Sontag," 40 Fed. Rep. 174	479
Southport Corporation v. Morris, (1893) 1 Q. B. 359; 63 L. J. M. C. 47; 68 L. T. 221; 57 J. P. 231; 41 W. R. 382; 7 Asp. M. C. 279	144
"South Sea" (1857), Swab. 141	125
Spaight v. Tedcastle (1881), 6 App. Cas. 217; 44 L. T. 589; 29 W. R. 761; 4 Asp. M. C. 406	27, 32, 35, 102, 201
"Spearman." See "Yourri" and "Spearman."	
Speller v. Bristol Steam Navigation Co. (1883), 13 Q. B. D. 96; 53 L. J. Q. B. 322; 50 L. T. 419; 32 W. R. 670; 5 Asp. M. C. 228—C. A.	281
"Spiegel," 84 Fed. Rep. 1002	437
"Spindrift." See "Jennie S. Barker."	
"Spirit of the Ocean" (1864), Br. & Lush. 336; 34 L. J. Ad. 74; 12 L. T. 239; 2 Mar. Law Cas. O. S. 192	179, 181
"Sprightly" and "Wells." See Hay v. Le Neve.	
"Spring" (1866), L. R. 1 A. & E. 99; 12 Jur. N. S. 788.....	369, 376
Stacpoole v. Bettridge, 5 Victoria L. R. 302; 14 W. R. 975	76
"Stadacona" (1847), 5 Not. of Cas. 371	9
"Staffordshire" (1872), 8 Moo. P. C. N. S. 443; L. R. 4 P. C. 194; 27 L. T. 46; 20 W. R. 557; 1 Asp. M. C. 365—P. C.	95
"Stakesby" (1890), 15 P. D. 166; 59 L. J. Ad. 72; 63 L. T. 115; 39 W. R. 80; 6 Asp. M. C. 532	339
"Stanmore" (1885), 10 P. D. 134; 54 L. J. Ad. 89; 53 L. T. 10; 5 Asp. M. C. 441—C. A.	304, 308, 408
"Star of India" (1876), 1 P. D. 466; 45 L. J. Ad. 102; 35 L. T. 407; 25 W. R. 377; 3 Asp. M. C. 261	118, 128, 130
"Star of New Zealand," Ship. Gaz., Nov. 7th, 1899	360
"State of Alabama," 17 Fed. Rep. 847	357
"State of Texas," 20 Fed. Rep. 254	310

TABLE OF CASES.

lxxi

	PAGE
"Steam Hopper No. 66," (1907) P. 254; 97 L. T. 360; 76 L. J. P. 110; on app., (1908) A. C. 126; 98 L. T. 464; 77 L. J. P. 84; 11 Asp. M. C. 37	180
Stearns v. Village Main Reef Gold Mining Co. (1905), 10 Com. Cas. 89	259
Steel v. Lester (1877), 3 C. P. D. 121; 47 L. J. C. P. 43; 37 L. T. 642; 26 W. R. 212; 3 Asp. M. C. 537	84, 182
"Stella," (1900) P. 162; 69 L. J. Ad. 70; 82 L. T. 390—C. A.; 9 Asp. M. C. 66	182, 250
Stephen v. Allan Line S. Co. (1911), S. C. 836	42
"Stephen Bennett," 54 Fed. Rep. 207	420
"Stephen Morgan," 4 Otto, 599	397
"Sterling" and "Equator," 16 Otto, 647	211
Stevens v. Trehawke, Seld. Ser. Admiralty, II. lxxxiii.	159
Stewart v. Steele (1842), 5 Scott, N. R. 927	257
"Stirlingshire" and "Africa" (1856), 2 Mar. Law Cas. O. S. Dig. 672	469
Stoomvaart Maatschappij Nederland v. Peninsular and Oriental Steam Navigation Co. See "Voorwaarts" and "Khedive."	
"Stork" and "Never Despair." See "Never Despair."	
"Stormcock" (1885), 53 L. T. 53; 5 Asp. M. C. 470	202
Stort v. Clements (1792), 1 Peake, 107	76, 109, 236
Straker v. Hartland (1864), 2 H. & N. 570; 5 N. R. 163; 34 L. J. Ch. 122; 10 Jur. N. S. 1143; 11 L. T. 622	187
"Stranger" (1848), 6 Not. of Cas. 36	453
——— Brown, Ad. 281	204, 216
"Strathay," 27 Fed. Rep. 562	213
"Strathnaver" (1875), 1 App. Cas. 58; 34 L. T. 148; 3 Asp. M. C. 113—P. C.	279, 280, 291
Stretch v. "Margaret," 2 Fed. Rep. 255	216
Stuart v. Isemonger. See "Diana."	
Sturgis v. Boyer, 24 How. 110	198, 200, 205
——— v. Clough, 21 How. 451	477
Submarine Telegraph Co. v. Dickson (1864), 15 C. B. N. S. 759; 33 L. J. C. P. 139; 10 Jur. N. S. 129; 10 L. T. 32; 12 W. R. 384	223, 224
Summers v. "Oneida," 84 Fed. Rep. 716	125
"Sunlight," (1904) P. 100; 90 L. T. 32; 73 L. J. P. 25; 9 Asp. M. C. 509	243, 386, 480
"Sunnyside," 1 Otto, 208	9, 75, 313, 386, 437, 439, 456
"Superb" and "Florence Bragington." See "Florence Bragington."	
"Superior" (1849), 6 Not. of Cas. 607	435, 427
"Supply, H.M.S." (1865), 12 L. T. 799; 2 Mar. Law Cas. O. S. 262	347
"Sutlej" (1905), T. L. R. 325	441
Sutton v. Mitchell (1785), 1 T. R. 18	174
"Swallow, H.M.S." (1856), Swab. 30	271, 292
——— (1876), 36 L. T. 331; 3 Asp. M. C. 371—C. A.	23, 480
"Swan," 3 Blatchf. 285	104
"Swanland" (1855), 2 Sp. 107	32, 50, 55, 274

	PAGE
"Swansea" and "Condor" (1879), 4 P. D. 115; 48 L. J. Ad. 33; 40 L. T. 442; 27 W. R. 748; 4 Asp. M. C. 115—C. A. ...	69, 261, 294
"Sweepstakes," Brown, Ad. 509	206
"Swift" (oysters), (1901) P. 168; 70 L. J. Ad. 47; 85 L. T. 346; 9 Asp. M. C. 244	92, 287
Swyre v. Church, Seld. Ser. Admiralty, II. lxxxiv.	161
"Sylph" (1854) (custom), 2 Sp. 75 10, 15, 306, 315, 316, 421 — (altering course), Swab. 233	309
— (personal injury) (1867), L. R. 2 A. & E. 24; 37 L. J. Ad. 14; 17 L. T. 519	270, 378, 280
"Sylvester Hale," 6 Bened. 523	303
Symons v. Baker, (1905) 2 K. B. 723; 74 L. J. K. B. 965; 93 L. T. 548; 54 W. R. 159; 21 T. L. R. 734; 10 Asp. M. C. 129	346
"Syracuse," 9 Wall. 672	194, 413
— 12 Wall. 167	9, 216
— (damages), 18 Fed. Rep. 828	126

T.

"T. C.," <i>In re</i> (1877), Ir. Rep. 11 Eq. 151	95
"Talabot" (1890), 15 P. D. 194; 63 L. T. 812; 6 Asp. M. C. 602..	428
"Talbot," (1891) P. 184; 64 L. T. 542; 7 Asp. M. C. 36	315, 473
"Tasmania" (1888), No. 1 (lien), 13 P. D. 110; 57 L. J. Ad. 49; 59 L. T. 263; 6 Asp. M. C. 305	81, 97, 99, 100, 207, 250
— (1890), No. 2 (Art. 27), 14 P. D. 53; 15 App. Cas. 223; 63 L. T. 1; 6 Asp. M. C. 517—H. L.	12, 270, 439
Taylor v. Burger (1898), 8 Asp. M. C. 364	243, 486
— v. Carryl, 20 How. 583	89
— v. Dewar (1864), 2 B. & S. 58; 33 L. J. Q. B. 141; 10 Jur. N. S. 361; 10 L. T. 267; 12 W. R. 579	113, 254, 257, 259, 280
"Tecla Carmen." See "North American" and "Tecla Carmen."	
"Telegraph," Valentine v. Cleugh (1854), 8 Moo. P. C. 167; 1 Sp. 427	9, 42, 56, 289
"Temiscouata" (1855), 2 Sp. 208; 1 Jur. N. S. 479	95, 279
"Tempus," (1913) P. 166; 83 L. J. P. 33; 109 L. T. 669; 12 Asp. M. C. 396; 29 T. L. R. 543	25, 70, 451
Tennant & Co. v. Ellis & Co. (1880), 6 Q. B. D. 46; 50 L. J. Q. B. 143; 43 L. T. 506; 29 W. R. 121	295
"Tergeste," (1903) P. 26; 72 L. J. Ad. 18; 87 L. T. 567; 9 Asp. M. C. 356	94
"Test" (1847), 5 Not. of Cas. 276 8, 12, 54, 393, 435, 442, 444	
"Teutonia," 23 Wall. 77	360
— (1872), L. R. 4 P. C. 171; 41 L. J. Ad. 57; 8 Moo. P. C. C. N. S. 411; 26 L. T. 48; 20 W. R. 421	249
"Thames." See "Sisters" (1876), 1 P. D. 281. — (1805), 5 C. Rob. 345	477
— (1875) (inevitable accident), 32 L. T. 343; 2 Asp. M. C. 512	20

TABLE OF CASES.

lxxiii

	PAGE
"Thames" and "Lutetia," <i>Maclaren v. Compagnie Française de Navigation à Vapeur</i> (1884), 9 App. Cas. 640	300, 408, 411
<i>Thames and Mersey Marine Insurance Co. v. British and Chilian Steamship Co.</i> , (1915) 2 K. B. 214; 24 L. J. K. B. 1087; 113 L. T. 173; 20 Com. Cas. 265; 31 T. L. R. 275	258
"Theodore H. Rand" (1887), 12 App. Cas. 247; 56 L. J. Ad. 65; 56 L. T. 343; 35 W. R. 781; 6 Asp. M. C. 122—H. L. 8, 14, 371, 402, 410	
"Theta," (1894) P. 280; 63 L. J. Ad. 160; 71 L. T. 25; 43 W. R. 160; 6 R. 712; 7 Asp. M. C. 480	133
"Thetford" (1887), 57 L. T. 455; 6 Asp. M. C. 179	529, 547
"Thetis" (1868), L. R. 2 A. & E. 365; 38 L. J. Ad. 42; 22 L. T. 276; 3 Mar. Law Cas. O. S. 357	25, 79, 209
——— <i>Ship. Gaz.</i> , June 23rd, 1906; March 15th, 1907	455
"Thomas Joliffe." See "Avon" and "Thomas Joliffe."	
"Thomas Lea" (1876), 35 L. T. 406; 3 Asp. M. C. 260	314, 315
"Thomas Martin," 3 Blatchf. 517	363
"Thomas P. Wray," 28 Fed. Rep. 526	125
"Thomas Powell" and "Cuba" (1866), 14 L. T. 603; 2 Mar. Law Cas. O. S. 344	4, 19
<i>Thomas v. Quartermain</i> (1887), 18 Q. B. D. 685; 56 L. J. Q. B. 340; 57 L. T. 537; 35 W. R. 555; 51 J. P. 516	3
<i>Thompson v. Hopper</i> (1858), El. Bl. & El. 1038; 27 L. J. Q. B. 441; 6 W. R. 857—Ex. Ch.	256
——— <i>v. Reynolds</i> (1857), 7 E. & B. 172; 26 L. J. Q. B. 93; 23 Jur. N. S. 464	255, 256
<i>Thomson v. South Eastern Rail. Co.</i> (1881), 9 Q. B. D. 320; 51 L. J. Q. B. 322; 46 L. T. 513; 30 W. R. 537	275
"Thornley" (1843), 7 Jur. 659	22, 290
"Thornton," 2 Bened. 429	466, 468, 476
<i>Thorogood v. Bryan</i> (1849), 8 C. B. 115; 18 L. J. C. P. 336.....	111, 114, 115
<i>Thorp v. Hammond</i> , 12 Wall. 408	102, 457, 470
<i>Thredgold c. Gosling</i> , Seld. Ser. Admiralty, II. lxxxiii.	159
"Thuringia" (1872), 41 L. J. Ad. 44; 26 L. T. 446; 1 Asp. M. C. 283	122, 123
"Thyatira" (1883), 8 P. D. 115; 52 L. J. Ad. 85; 49 L. T. 406; 32 W. R. 276; 5 Asp. M. C. 147	127
"Ticonderoga" (1857), Swab. 215	86, 98, 103, 196
<i>Tills c. "Mary"</i> (1703), Marsd. Ad. Cas. 284	105
<i>Tindall v. Bell</i> (1843), 11 M. & W. 228; 12 L. J. Ex. 160	128
"Tirzah" (1878), 4 P. D. 33; 48 L. J. Ad. 15; 39 L. T. 547; 27 W. R. 584; 4 Asp. M. C. 55	321, 329
"Titan," 23 Fed. Rep. 413	31, 115, 316
"Titan" and "Rambler" (1906), 96 L. T. 93; 10 Asp. M. C. 350..	2, 343, 350, 547
"Tolka," Ad. Div. 14 Dec. 1886	343
"Topaze, H.M.S." (1864), 10 L. T. 659; 12 W. R. 923; 2 Mar. Law Cas. O. S. 38	10, 347

	PAGE
"Toward" and "Turkistan" (1885), 13 Ct. of Sess. Cas. 4th Ser. 342	108
——— (1899) (not reported)	122, 131
Traders' North Staffordshire Carrying Co., <i>In re</i> (1875), L. R. 19 Eq. 60	94
"Transfer" (No. 2), 56 Fed. Rep. 313	24
"Transit," 3 Bened. 192	373, 395
"Trave," 68 Fed. Rep. 390	61, 66, 358, 433
Trew v. Peirce, "Mary of Poole" and "Mary of Weymouth" (1692), Marsd. Ad. Cas. 264	143, 162
"Trident" (1854), 1 Sp. 217	9, 473
"Triune" (1834), 3 Hag. 114	77, 175, 182
"Troy," 28 Fed. Rep. 861	214
Trufort, <i>Re</i> , Trafford v. Blanc (1887), 36 Ch. D. 600; 36 W. R. 163	234
"Try Again," Ship. Gaz., June 2nd, 1908	423, 424, 425
Tryon v. National Provident Institution (1886), 16 Q. B. D. 678; 55 L. J. Q. B. 236; 54 L. T. 167; 34 W. R. 398	114
"Tryst," (1909) P. 333	72
Tuff v. Warman (1857), 2 C. B. N. S. 740; 26 L. J. C. P. 263; 5 W. R. 685; on app. 5 C. B. N. S. 573; 5 Jur. N. S. 222; 27 L. J. C. P. 322; 6 W. R. 693—Ex. Ch.	27, 34, 35, 56, 57, 58
"Tugela" (1913), 30 T. L. R. 101	129
"Turquoise," (1908) P. 148; 98 L. T. 588; 77 L. J. P. 97; 11 Asp. M. C. 28	343, 344
"Turret Court" (1900), 69 L. J. Ad. 117; 84 L. T. 331; 9 Asp. M. C. 162	296
"Tweedsdale" (1889), 14 P. D. 164; 58 L. J. Ad. 41; 61 L. T. 371; 37 W. R. 783; 6 Asp. M. C. 430	338, 339, 411, 431, 444
"Twenty-one Friends," 33 Fed. Rep. 190	19
"Two Ellens," Johnson v. Black (1872), 3 Moo. P. C. N. S. 398; L. R. 4 P. C. 161; 41 L. J. Ad. 33; 26 L. T. 1; 20 W. R. 592; 1 Asp. M. C. 208	89, 91, 92, 96
"Two Sisters" (1852), 1 Pritch. Ad. Dig. (ed. 1887) 248	42
Twynneham v. Harman (1774), Marsd. Ad. Cas. 130	221

U.

Ueberweg v. La Compagnie Générale Transatlantique, 60 Fed. Rep. 461	420
"Uhla" (1867), L. R. 2 A. & E. 29 (note); 37 L. J. Ad. 16 (note); 19 L. T. 89; 3 Mar. Law Cas. O. S. 148	467, 475
"Ulster" (coming out of dock) (1862), 1 Mar. Law Cas. O. S. 234..	480
——— (appeal) (1862), 1 Moo. P. C. N. S. 31; 10 W. R. 794....	453
"Umbria," 166 U. S. Rep. 404	309, 358, 362
"Umona," (1914) P. 141; 83 L. J. P. 106; 111 L. T. 415; 12 Asp. M. C. 527; 30 T. L. R. 498	1, 148, 200
"Umsinga," (1911) P. 234; 80 L. J. P. 90; 27 T. L. R. 439..	455, 532, 543

TABLE OF CASES.

lxxv

	PAGE
"Undaunted" (1886), 11 P. D. 46; 55 L. J. Ad. 24; 54 L. T. 542; 34 W. R. 686; 5 Asp. M. C. 580	202, 203
"Underwriter." See "Lake St. Clair" and "Underwriter."	
"Undine" (1857), 2 Pritch. Ad. Dig. 1761	131
"Union" (1860), Lush. 128; 30 L. J. Ad. 17; 3 L. T. 280	94, 226
Union Marine Ins. Co. v. Borwick, (1895) 2 Q. B. 279; 64 L. J. Q. B. 679; 73 L. T. 156; 8 Asp. M. C. 71	252
Union Steamship Co. v. Owners of "Aracan." See "American" and "Syria."	
"United Service" (1883), 8 P. D. 56; 5 Asp. M. C. 55; 52 L. J. Ad. 18; 48 L. T. 486; 31 W. R. 614; on app. 9 P. D. 3; 53 L. J. Ad. 1; 32 W. R. 565; 5 Asp. M. C. 170; 49 L. T. 701	202, 210, 485
"United States" (1865), 12 L. T. 33—P. C.	33, 146, 483
— v. St. Louis & Mississippi Valley Transportation Co., 184 U. S. Rep. 247	43
"Unity" (1856), Swab. 101	10, 54, 297, 422, 424
"Upcerne," (1912) P. 160; 81 L. J. P. 110; 107 L. T. 860; 12 Asp. M. C. 281; 28 T. L. R. 370—D.	144, 288
"Upton Castle," (1906) P. 147; 93 L. T. 814; 75 L. J. P. 77; 10 Asp. M. C. 153	337, 338
"Urania" (1861), 5 L. T. 402; 10 W. R. 97; 1 Mar. Law Cas. O. S. 156	277
"Uskmoor," (1902) P. 250; 71 L. J. Ad. 103; 87 L. T. 55; 51 W. R. 93; 9 Asp. M. C. 316	450
"Utopia," (1893) App. Cas. 492; 62 L. J. P. C. 118; 70 L. T. 47; 1 R. 394; 7 Asp. M. C. 408—P. C.	98, 104, 294

V.

Vadaia v. Lawes (1890), 25 Q. B. D. 310; 62 L. T. 701; 63 <i>ibid.</i> 128; 38 W. R. 594	234
"Valdei" (1915), 31 T. L. R. 144	21
"Valleyo," Ad. Div. 27th April, 1887	73
Van Eijek v. Somerville, (1906) A. C. 489; 10 Asp. M. C. 263	191
"Vanderbilt," 6 Wall. 225	9, 427
Vanderplank v. Miller (1828), Moo. & M. 169	456
"Vandyk" (1881), 7 P. D. 42; on app. 47 L. T. 694; 5 Asp. M. C. 17	263
"Velocity" (1869), 6 Moo. P. C. N. S. 263; L. R. 3 P. C. 44; 39 L. J. Ad. 20; 21 L. T. 686; 18 W. R. 264	10, 274, 299, 307, 382, 384, 391, 392, 427, 428
Velthasen v. Ormsby (1789), 3 T. R. 315	220
Vennall v. Garner (1830), 1 Car. & M. 21; 3 Tyr. 85	13
"Vera Cruz," No. 1 (1884) (infringement of regulations), 9 P. D. 88; 53 L. J. Ad. 33; 51 L. T. 24; 32 W. R. 783; 5 Asp. M. C. 254	35, 36, 60, 69, 74, 142, 154, 239
— (1884) No. 2 (jurisdiction <i>in rem</i>), 9 P. D. 96; 53 L. J. Ad. 33; 51 L. T. 104; 5 Asp. M. C. 270; (H. L.) nom. Seward v. "Vera Cruz," (1906) 10 App. Cas. 59; 54 L. J. Ad. 9; 52 L. T. 474; 33 W. R. 477; 5 Asp. M. C. 386	36, 91, 133, 225, 232, 233

	PAGE
Verduen <i>o.</i> March (not reported)	159
"Veritas," (1901) P. 304; 70 L. J. Ad. 75; 85 L. T. 136; 9 Asp. M. C. 237	92, 94, 262, 287
"Vernon" (1842), 1 W. Rob. 316	227
"Vesper," 9 Fed. Rep. 569	358, 368
"Vesuvius" and "Savernake." See "Savernake."	
"Vianna" (1858), Swab. 405	481
"Vicksburg," 7 Blatchf. 216	471
"Victor" (1860), Lush. 72; 29 L. J. Ad. 110; 2 L. T. 331.....	90, 95, 278, 280
"Victor Covacevitch" (1885), 10 P. D. 40; 54 L. J. Ad. 48; 52 L. T. 632; 5 Asp. M. C. 417	273
"Victoria" (lights) (1848), 3 W. Rob. 49 ...314, 315, 362, 364, 365	
— (1887) No. 1 (damage to cargo), 12 P. D. 105; 56 L. J. Ad. 75; 56 L. T. 499; 35 W. R. 291; 6 Asp. M. C. 120	91
— No. 2 (life claimants) (1888), 13 P. D. 125; 57 L. J. Ad. 103; 59 L. T. 728; 37 W. R. 62; 6 Asp. M. C. 335	188
"Victoria" and "Keilawarra." See <i>Australian, &c. Co. v. Smith.</i>	
<i>Victorian Railway Commissioners v. Coultas</i> (1888), 13 App. Cas. 222; 57 L. J. P. C. 69; 58 L. T. 390; 37 W. R. 129	117
"Victory" and "Plymothian," 168 U. S. Rep. 410	153, 385
"Vildosala" (1880), 42 L. T. 96; 4 Asp. M. C. 228	276
"Ville du Havre," 7 Bened. 328	455
"Vindomora" (1891), 14 P. D. 172; 59 L. J. Ad. 8; 61 L. T. 655; 38 W. R. 69; 6 Asp. M. C. 438; affd. (1891) App. Cas. 1; 60 L. J. Ad. 1; 63 L. T. 749; 6 Asp. M. C. 569	309, 362
"Viola," 59 Fed. Rep. 632	60, 453
<i>Violet v. Blague</i> (1616), Cro. Jac. 514	220
"Virgil" (1843), 2 W. Rob. 201	19, 269
"Virginia Ehrman," 7 Otto, 309	211
"Virgo" (1876), 35 L. T. 519; 25 W. R. 397; 3 Asp. M. C. 285... ..	15, 22
— 7 Bened. 495	398
"Vivar" (1877), 2 P. D. 29; 35 L. T. 782; 25 W. R. 453; 3 Asp. M. C. 308—C. A.	220, 266
"Vivid" (speed) (1856), Swab. 88; on app. nom. <i>Churchward v. Palmer</i> , 10 Moo. P. C. 472; 4 W. R. 755—P. C.	56, 359
— (keep her course) (1849), 7 Not. of Cas. 127	365, 392, 401
— (foul berth) (1873), 42 L. J. Ad. 57; 28 L. T. 375; 1 Asp. M. C. 601	460, 461, 465
<i>Voguel v. Tomlinson</i> (1734), Marsd. Ad. Cas. 314	90, 171
"Volant" (1842) (part-owner; liability), 1 W. Rob. 383; 1 Not. of Cas. 503	95, 170, 181, 221, 278, 279
— (arrest; damages) (1864), Br. & L. 321	280
"Volcano" (1844), 2 W. Rob. 337	109, 461, 468
"Voorwaarts" and "Khedive," <i>Stoomvaart, &c. Co. v. Peninsular, &c. Co.</i> (infringement of regulations) (1880), 5 App. Cas. 876; 52 L. J. Ad. 1; 43 L. T. 610; 29 W. R. 173; 4 Asp. M. C. 360—	
H. L. 4, 6, 7, 8, 9, 12, 31, 57, 58, 59, 61, 62, 67, 68, 71, 74, 299, 300, 306, 388, 402, 404, 405, 410, 411, 412, 433, 434, 436, 443, 447, 459	

TABLE OF CASES.

lxxvii

	PAGE
"Voorwaarts" and "Khedive," Stoomvaart, &c. Co. v. Peninsular, &c. Co. (division of loss) (1882), 7 App. Cas. 795; 52 L. J. Ad. 1; 47 L. T. 198; 31 W. R. 249; 4 Asp. M. C. 567—H. L.....	82, 102, 141, 142, 143, 148, 151, 152, 170, 174, 190, 256
"Vortigern" (1859), Swab. 518; 1 L. T. 307	268
"Vrow Janetze," Ad. Ct. 2nd Feb. 1820	168

W.

"W. A. Levering," 36 Fed. Rep. 511	204, 316
"W. A. Scholten" (1888), 13 P. D. 8; 57 L. J. Ad. 4; 58 L. T. 91; 36 W. R. 559; 6 Asp. M. C. 244	267
"W. C. Redfield," 4 Bened. 227	387, 471
"W. H. No. 1" and "Knight Errant," (1911) App. Cas. 30	480
"W. H. Gratwick," 81 Fed. Rep. 590	212
"W. J. Keyser," 56 Fed. Rep. 731	217
Wahlberg v. Young (1876), 45 L. J. C. P. 783; 24 W. R. 846; 4 Asp. M. C. 27	187, 191, 209, 283
Waite v. North Eastern Ry. Co. (1858), E. B. & E. 719	115
Wakelin v. London and South Western Ry. Co. (1886), 12 App. Cas. 41; 56 L. J. Q. B. 229; 55 L. T. 709; 35 W. R. 144	35, 40
Walker v. Maitland (1858), 5 B. & A. 171	252, 256
"Wallace," 41 Fed. Rep. 894	464
Walsh v. Brooklyn and New York Ferry Co., 68 Fed. Rep. 507... ..	8, 393, 480
"Walter D. Wallet," (1893) P. 202; 62 L. J. Ad. 88; 69 L. T. 771; 7 Asp. M. C. 398	280
Waltham v. Mulgar (1606), Moo. 776	80, 223
"Wanata," 4 Bened. 310; 5 Otto, 600	187
"Wanderer," 20 Fed. Rep. 140	154
"Wansfell" (1855), 1 Sp. 269	56
"Warkworth" (1884), 9 P. D. 20; 53 L. J. Ad. 4; 32 W. R. 479; 49 L. T. 715; 5 Asp. M. C. 194; on app. 9 P. D. 145; 53 L. J. Ad. 65; 33 W. R. 112; 51 L. T. 558; 33 W. R. 112; 5 Asp. M. C. 326 —C. A.	15, 22, 175, 181, 186, 187, 283, 295
"Warrior" (1872), L. R. 3 A. & E. 553; 27 L. T. 101; 21 W. R. 82; 1 Asp. M. C. 400	388, 446
"Washington" (1841), 5 Jur. 1067	142, 149, 289
"Wasp" (1866), L. R. 1 A. & E. 367; 16 L. T. 854; 2 Mar. Law Cas. O. S. 552	96
"Waterloo" (1820), 2 Dods. Ad. 433	99
Wayde v. Lady Carr (1822), 2 Dow. & R. 255	426
"Webb," 14 Wall. 406	201, 210, 211
Webster v. Disharoon, 64 Fed. Rep. 143	84
—— v. Manchester, Sheffield, &c. Ry. Co. (1884), 5 Asp. M. C. 256, n.	267
"Wega," (1895) P. 156; 64 L. J. Ad. 68; 72 L. T. 332; 7 Asp. M. C. 597	344, 535, 537

	PAGE
Wells v. Armstrong, 29 Fed. Rep. 216	44
—— v. Osman (1703), 2 Raym. 1044; 6 Mod. 238	100
"Wenona," 19 Wall. 41	305
"West Cock," (1911) P. 25; 80 L. J. P. 97; C. A. 208; 104 L. T. 736; 12 Asp. M. C. 75; 55 S. J. 329; 27 T. L. R. 301	45, 202, 203, 205, 206
"Western Belle" (1906), 95 L. T. 364; 10 Asp. M. C. 279	456, 458
Western Electric Co. v. G. E. R., (1914) 3 K. B. 554; 83 L. J. K. B. 1326; 111 L. T. 29; 19 Com. Cas. 301; 30 T. L. R. 416	250
"Westernland," 24 Fed. Rep. 703	37
"Westhall," 153 Fed. Rep. 1010	9
"Westphalia," 4 Bened. 404; 24 L. T. 75; 1 Asp. M. C. 12	363
"Wexford" (1888), 13 P. D. 10; 57 L. J. Ad. 6; 58 L. T. 28; 36 W. R. 560; 6 Asp. M. C. 244	124
Wharton c. Pitts (1693), 1 Salk. 543	220
"Wheatshcaf" and "Intrepide" (1866), 13 L. T. 612; 2 Mar. Law Cas. O. S. 292	38, 39, 416
White v. Crisp (1854), 10 Ex. 312	17, 103
—— v. Dobinson (1844), 14 Sim. 373	257
—— v. Phillips (1863), 15 C. B. N. S. 245; 33 L. J. C. P. 33; 10 Jur. N. S. 425; 9 L. T. 388	103
—— c. Walker, Seld. Ser. Adm. II. lxxxiv.	160
"Whiteash" and "Winnie," 64 Fed. Rep. 893	393, 444
"Whittieburn" (1900), 83 L. T. 743; 9 Asp. M. C. 154	422, 425
"Whitney," 77 Fed. Rep. 1001	353
Whitridge v. Dill, 23 How. 448	418, 457
"Why Not" (1868), L. R. 2 A. & E. 265; 38 L. J. Ad. 26; 18 L. T. 861	269
"Wild Ranger" (1860), Lush. 553; 32 L. J. Ad. 49; 9 Jur. N. S. 134; 7 L. T. 725; 11 W. R. 255	170, 228
"Wild Rose" and J. M. Stubbs (1915), 32 T. L. R. 164	288
Wildman c. Blakes. See "Petersfield" and "Judith Randolph."	
"Wilhelmina." See "Williamina."	
Wilkins v. Day (1884), 12 Q. B. D. 110; 49 L. T. 399; 32 W. R. 123.	43
Wilkinson c. Clarke (not reported)	159
"Willamette," 70 Fed. Rep. 874	31
"Willard Saulsbury," 1 Pars. on Ship. (ed. 1869) 564	344
"William III." (1871), L. R. 3 A. & E. 437; 25 L. T. 386; 20 W. R. 216; 1 Asp. M. C. 129	90
"William," 4 Quebec L. R. 306	197, 211
"William Cox," 9 Fed. Rep. 672	217
"William Hutt" (1860), Lush. 25	272, 275, 276
"William Kraft," 33 Fed. Rep. 847	217, 218
"William Lindsay" (1873), L. R. 5 P. C. 338; 29 L. T. 355; 22 W. R. 6; 2 Asp. M. C. 118	16, 21, 22, 108, 463
"William Money" (1827), 2 Hag. 136	96
"William Murtaugh," 3 Fed. Rep. 434	217
"William W. Wood," 66 Fed. Rep. 601	208
"Williamina" (1878), 3 P. D. 97	127
Williams c. Marten, Seld. Ser. Adm. II. lxxxiv.	149

TABLE OF CASES.

lxxix

	PAGE
Willoughby v. Horridge (1862), 12 C. B. 742	113
"Wills," No. 66 (1914), 83 L. J. P. 162; 30 T. L. R. 676	179
Wilsey v. "Celestial Empire," 2 Fed. Rep. 651	215
Wilson v. Currie, "Otto" and "Thorsa," (1894) App. Cas. 116— H. L.	66, 306, 337, 381, 407
—— v. Dickson (1818), 2 B. & Ald. 2	170, 175, 181
—— v. Merry (1866), L. R. 1 Sc. Ap. 326	115
—— v. Newport Dock Co. (1866), L. R. 1 Ex. 177	121, 132
Wilson Sons v. Owners of Cargo <i>ex</i> "Xantho" (1887), 12 App. Cas. 503; 56 L. J. Ad. 116; 57 L. T. 701; 33 W. R. 353; 6 Asp. M. C. 9, 207—H. L.	247
Windham and others v. Robertson (1905), 42 Sc. Law Rep. 602 ...	411
"Winkfield," (1902) P. 42; 71 L. J. Ad. 21; 85 L. T. 668; 49 W. R. 685; 9 Asp. M. C. 259—C. A.	113, 191
"Winooski," 162 Fed. Rep. 64	358
"Winstanley," (1896) P. 237; 65 L. J. Ad. 121; 74 L. T. 432; <i>affd.</i> 75 L. T. 133; 8 Asp. M. C. 170	26, 385, 425, 487
"Wirrall" (1843), 3 W. Rob. 56	454
"Wisconsin," 23 Fed. Rep. 283	333, 345
Withofsky v. Wier, 32 Fed. Rep. 301	89
"Woburn Abbey" (1869), 38 L. J. Ad. 23; 20 L. T. 621; 3 Mar. Law Cas. O. S. 240	464
Wood v. Smith. See "City of Cambridge."	
"Wooda" (1915), 31 T. L. R. 222	392, 418
"Woodford," Ship. Gaz., March 10th & 11th, 1905	22
Woodley v. Michell (1883), 11 Q. B. D. 47; 52 L. J. Q. B. 325; 48 L. T. 599; 31 W. R. 651; 5 Asp. M. C. 71—C. A.	247
"Woodrop Sims" (1816), 2 Dods. Ad. 83	30, 136, 143, 166
Wordsworth v. Willan (1805), 5 Esp. 273	426
Workman v. Mayor, &c. New York, 179 U. S. Rep. 552	102
Worth v. Steam Tug "William Murtagh," 6 Fed. Rep. 192	104
"Wrestler," 144 Fed. Rep. 334; 153 Fed. Rep. 973	423
Wright v. Lethbridge (1889), 63 L. T. 572; 6 Asp. M. C. 558— C. A.	107, 109
"Wyanoke," 40 Fed. Rep. 702	363

X.

"Xantho." See Wilson Sons v. Owners of Cargo <i>ex</i> "Xantho."	
Xenos v. Fox (1868), L. R. 4 C. P. 665; 38 L. J. C. P. 351; 19 L. T. 84; 17 W. R. 893—Ex. Ch.	254

Y.

Yates v. Hall (1785), 1 T. R. 73	174
—— v. Whyte (1837), 4 Bing. N. C. 272; 2 Scott, 640; 7 L. J. C. P. 116	133, 257, 259

	PAGE
"Yarmouth," (1909) P. 293; 25 T. L. R. 746; 79 L. J. P. 1; 101 L. T. 714; 11 Asp. M. C. 331	180
Yaxley v. Delavall, Seld. Ser. Admiralty, II. lxxxiv.	161
"Ydun," (1899) P. 236; 68 L. J. Ad. 101; 81 L. T. 10; 8 Asp. M. C. 551—C. A.	108
"Yeager," 20 Fed. Rep. 653	259
"Yorkshireman" (1827), 2 Hag. Ad. 30 (note)	127
"Young America" (damages), 54 Fed. Rep. 410	126
———— (tug and tow), 25 Fed. Rep. 207	214, 217
———— (tug and tow), 26 Fed. Rep. 174.....	127, 153, 213, 217
"Young Mechanic," 2 Curtis, 404	89
Young v. S.S. "Scotia," (1903) App. Cas. 501; 72 L. J. P. C. 115; 89 L. T. 374; 9 Asp. M. C. 485	346
"Yourri" and "Spearman" (1885), 10 App. Cas. 276; 53 L. T. 29; 5 Asp. M. C. 458—P. C.	422, 484

Z.

"Zadok" (1883), 9 P. D. 114; 53 L. J. Ad. 72; 32 W. R. 1003; 50 L. T. 695; 5 Asp. M. C. 252	48, 49, 353, 355, 356, 363, 364, 389, 439, 453
"Zanzibar," (1892) P. 233; 61 L. J. Ad. 81; 68 L. T. 297; 40 W. R. 702; 7 Asp. M. C. 258	189
"Zephyr" (1864), 11 L. T. 351; 2 Mar. Law Cas. O. S. 146.....	278, 279
"Zeta." See Mersey Docks and Harbour Board v. Turner.	
Zihrul v. Cormack (1904), (O. H.), 12 S. L. T. 294	423
"Zoe" (1886), 11 P. D. 72; 55 L. J. Ad. 52; 54 L. T. 879; 35 W. R. 61; 5 Asp. M. C. 583	182, 191
"Zollverein" (1856), Swab. 96; 2 Jur. N. S. 429	226, 475

THE LAW OF COLLISIONS AT SEA.

CHAPTER I.

NEGLIGENCE.

THE mere fact that a ship strikes or goes foul of and injures another creates no liability in herself, her owners, or those in charge of her. In the phraseology commonly employed in cases, text books, and even occasionally statutes, the vessel herself is said to be liable or in fault or to blame, but this is merely a figurative way of expressing the liability of the owner or the fault of those in charge (*a*). By appropriate process in an action *in rem* a vessel may be arrested and held as security for the payment of the amount of the judgment, and in a writ of summons *in rem* the claim is made against the ship and her freight, but the judgment in the action is against the owner of the ship and is not limited to her value (*b*). The liability is that of the owner, not of the vessel (*c*). Damage caused by negligence is the cause of action, so that where no damage is occasioned by a collision caused by negligence, or where a collision causes damage, but neither the collision nor the damage were caused by negligence, no cause of action arises. The assertion that one ship "ran down"—in the language of the old cases "stemmed"—the other, is a mere allegation of negligence, and in no way advances the case (*d*). Thus, where a barge negligently came into collision with a schooner without fault

Collision without negligence creates no liability.

(*a*) *The Cairnbahn*, (1914) P. 25, 31; *The Umona*, (1914) P. 141, 144; and see p. 85, *infra*.

(*b*) *The Duplex*, (1912) P. 8.

(*c*) As to liability, see further,

infra, Chapter III. p. 76 *seq.*

(*d*) *The James Watt* (1844), 2 W. Rob. 270, 278; and *per* Lord Esher, *The Margaret* (1881), 6 P. D. 76.

on the part of the schooner, and without causing damage to the schooner, but was herself holed by the schooner's anchor, negligently carried in a dangerous position, the schooner had no right of action, but the barge had, because of the injury inflicted by the schooner's negligence (*e*). Thus also where a tug was lawfully lying alongside a pontoon, and was run into by another vessel, and driven against the pontoon, it was held that no action would lie by the owners of the pontoon against the tug (*f*). Similarly in cases where the cause of the collision or the damage is "inevitable accident" no cause of action arises (*g*).

Proof of
negligence.

Between 1873 and the 16th December, 1911, there was one case in which damages could be recovered without proof of negligence—when one of the Regulations for Preventing Collisions at Sea was infringed and the breach might by possibility have contributed to the collision, the ship infringing was deemed to be in fault for the collision under the provisions of the Merchant Shipping Acts, 1873 and 1894 (*h*). This statutory rule of law excluded evidence directed to show that the infringement did not in fact contribute to the collision and rendered the consideration of actual negligence unnecessary. By the Maritime Conventions Act, 1911 (*i*), which came into force on the 16th December, 1911, this provision was repealed, and in all cases commenced since that date (*k*) proof of a breach of one of the Regulations gives rise to no statutory presumption and is merely evidence of negligence. To prove that a vessel is to blame it is no longer sufficient to establish a breach of a regulation which might by possibility have contributed to the collision, it must now be shown that the breach did in fact contribute (*l*). Thus with regard to the necessity of proving negligence on the part of those against whom damages are claimed, an action for damages by collision does not now differ from any other action for damage by

(*e*) *The Margaret* (1881), 6 P.D. 76; followed in *The Kaiser Wilhelm II.* (1915), 85 L. J. P. 26; see also p. 26, *infra*.

(*f*) *The Titan* (1906), 10 Asp. 350.

(*g*) For the meaning of "inevit-

able accident" and cases, see *infra*, p. 18 *seq.*

(*h*) 36 & 37 Vict. c. 85, s. 17; and 57 & 58 Vict. c. 60, s. 419 (4).

(*i*) 1 & 2 Geo. 5, c. 57, s. 4.

(*k*) *Ibid.* s. 9 (2).

(*l*) See *infra*, Chapter II. and pp. 69 *seq.*

negligence. The plaintiff cannot succeed if the case is left in doubt (*m*).

Where a ship, or each of two ships, alleges negligence on the part of the other, and it is manifest that the collision was caused by fault somewhere, but the evidence does not satisfy the Court on which side the fault lies, no damages can on the same principle be recovered, and each ship bears her own loss (*n*). "Proof that the action of one party or the other is not proved to have contributed to the collision, leaves the case a case of inevitable accident, that is to say a case in which neither party is to blame" (*o*). The English law as to the incidence of loss in this case differs from that of some foreign countries, and also, it seems, from what has been called the general maritime law (*p*).

Case of inscrutable fault.

Negligence, in a legal sense, is a negative rather than a positive term, and is not susceptible of precise definition of universal application. The ideas of negligence and duty are strictly correlative. There is no such thing as negligence in the abstract, for negligence is simply the neglect of some care, which we are bound by law to exercise (*q*). What it is may perhaps best be expressed as "doing something which ought either to be done in a different way or not at all, or omitting to do something which ought to be done" (*r*). In collision cases the negligence relied on is generally a failure to exercise the skill, care and nerve which

What is negligence.

(*m*) *The Ligo* (1831), 2 Hag. Ad. 356; *The City of London* (1857), Swab. 245, 300, 302.

(*n*) *The Olympic v. H.M.S. Hawke*, (1913) P. 214, 247, per Vaughan Williams, L. J.

(*o*) *The Maid of Auckland* (1848), 6 Not. of Cas. 240; *The Catherine of Dover* (1831), 2 Hag. Ad. 145; *The Lacomia* (1863), 2 Moo. P. C. N. S. 161; and see per Lord Wensleydale, *Morgan v. Sim*, *The London* (1857), 11 Moo. P. C. 307, 312. But formerly the law was otherwise: *infra*, p. 156 seq. As to whether trespass or case was the proper form of action at common law, see *Davis v. Saunders* (1822), 2 Chit. 639; *Ogle v. Barnes* (1799), 8 T. R. 188; *Huggett v. Montgomery* (1807), 2 Bos. & P. N. R. 446.

(*p*) See Bell's Commentaries on the Law of Scotland (ed. 1870, by McLaren), I. 627; Bynkershoek, Quæst. Jur. Priv. O. 4, c. 18; Pothier, vol. 4, p. 444. There is no express authority for this statement as to the peculiarity of English law, and there are earlier decisions to the contrary; but there is no doubt that the law is as stated in the text. As to the Roman and foreign law on the point, see *infra*, p. 88, and the note at the foot of Chapter VI.

(*q*) *Grill v. General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600, 602; *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685, per Bowen, L. J.

(*r*) Per Alderson, B., *Blythe v. Birmingham* (1856), 11 Exch. 781.

are ordinarily to be found in a competent seaman, or a breach of regulation, either international or local, governing navigation or equipment, or more rarely the inefficient or defective condition of the vessel or her equipment. "We are not to expect extraordinary skill or extraordinary diligence, but that degree of skill, and that degree of diligence, which is generally to be found' in persons who discharge their duty" (s). In *The Dundee* (t), Lord Stowell defined negligence as "a want of that attention and vigilance which is due to the security of other vessels that are navigating the same seas, and which, if so far neglected as to become, however unintentionally, the cause of damage of any extent to such other vessels, the maritime law considers as a dereliction of bounden duty, entitling the sufferer to a reparation in damages." In a case before the House of Lords, it was said that the duty of a seaman is "to take reasonable care and to use reasonable skill" to prevent the ship from doing injury (u); and this reasonable care must be tested by the circumstances of each case, thus in the case of a collision between a ship being launched and another afloat, it was held that under the circumstances the utmost possible precautions by those in charge of the launch were no more than reasonable, and that it was negligence not to take every possible step to assure themselves that nothing was approaching the place which the launch would reach (x). It is negligence not to take reasonable steps to avoid danger in navigation, even though the failure to take the requisite steps can be justified by another good motive, e.g., to save expense to the owner (y). But when those in charge of a vessel are placed, through no fault of their own, in a real dilemma and have to take one of two courses, each of which involves risk of causing damage to life and property, they are not guilty of negligence if they take the course involving the least risk, even though damage in fact results (z). To

(s) *Per* Dr. Lushington, *The Thomas Powell and The Cuba* (1866), 14 L. T. 603.

(t) (1823), 1 Hag. Ad. 120.

(u) *Per* Lord Blackburn, *The Voorwaarts and The Khedive* (1880), 5 App. Cas. 876, 890.

(x) *The George Roper* (1883), 8 P. D. 119; see also *The High-*

land Loch, (1911) P. 261; (1912) App. Cas. 312.

(y) *The Highland Loch*, (1911) P. 261; (1912) App. Cas. 312. Cf. cases where failure to take a tug caused collision: e.g., *The Gertor* (1894), 7 Asp. M. C. 472; *The Annot Lyle* (1886), 11 P. D. 114.

(z) *The Highland Loch*, (1911) P. 261; (1912) App. Cas. 312.

exercise ordinary skill, care and nerve is not the whole duty of seamen, but to observe the regulations and to exercise ordinary skill, care and nerve. Where a regulation applies it must be obeyed, where no regulation applies the dictates of good seamanship must be followed. Thus, if a ship comes into collision through not going at a moderate speed in a fog, she has broken an international regulation. If, seeing a fog ahead, a vessel has not taken precautions to lessen her speed as she approaches the fog and a collision in the fog is a result, she will be held to blame, because those in charge have not exercised good seamanship (a).

As will be seen hereafter it is a positive duty to observe the regulations, and a departure from them is only justified by necessity. Non-observance is *prima facie* negligence, therefore it would seem that unless it can be clearly shown that the departure from the regulation either did not in fact wholly or in part cause the collision (b), or was in fact right under the circumstances, non-observance will involve blame. In order to avoid blame under the old law it had to be proved that a breach could not possibly have contributed to the collision; now, it is submitted, it must be proved affirmatively that it did not cause or contribute to the collision (c).

Breach of regulations.

Failure to obey a regulation (d) is, generally speaking, a breach of duty and evidence of negligence, but by judicial decision and by express saving clauses in the regulations themselves non-observance at times becomes a duty, and difficult questions arise, though more often from the difficulty of applying principles to facts than from any uncertainty as to the principles applicable. In this chapter an endeavour will be made to state the law as to the consequences of a breach, leaving detailed consideration of the application and effect of the several regulations to a later chapter (e). In considering decisions upon the consequences of a breach of a regulation regard must be had to the statutory provisions affecting the liability of shipowners in force at the date of

(a) *The St. Paul*, (1908) P. 320, at p. 336; 11 Asp. 152, at p. 156.

(b) *I.e.*, in all ordinary circumstances. "Agony of the collision" acts are on a different footing.

(c) See *infra*, p. 69 *seq.*

(d) *The Regulations for Preventing Collisions at Sea*, 1910. Printed in full, *infra*, Appendix I., p. 491 *seq.*

(e) Chapter XIV., *infra*, p. 297 *seq.*

the decision. From the year 1840 rules, varied and added to from time to time, have prescribed courses to enable approaching vessels to keep clear of one another, lights to be shown and signals to be made. These rules (*f*) were issued by various authorities; some were statutory, for the breach of some penalties were imposed, while others were little more than directions, which for the sake of safety it was good seamanship to follow as a general rule.

Local rules.

Local rules are in force in many rivers and harbours, and obedience to them instead of the regulations is obligatory in the localities in which they are applicable (*g*).

Breach of the regulations is negligence.

By section 419 (1) of the *Merchant Shipping Act, 1894 (*h*), it is specifically enacted that owners and masters of ships must obey the regulations, and in the Preliminary Article of the Regulations of 1910 (*i*) it is laid down that these rules shall be followed by all vessels upon the high seas and in all waters connected therewith navigable by sea-going vessels (*k*). It is therefore a duty to observe the regulations, and non-fulfilment of a duty without lawful excuse is negligence. Apart from legislative enactment it is the duty of those in charge of the navigation of vessels to observe rules laid down for the public safety, and if they do not owners are responsible for the resulting damage (*l*). If a regulation is disobeyed, the vessel disobeying is not, therefore, to be held to blame. The regulations are evidence of what is the duty of a vessel to do under the circumstances, and if it should appear that a vessel, by the breach of one of them, has occasioned or contributed to a collision, such a breach would afford the very strongest reason for holding that a vessel had been guilty of a breach of duty and was to blame for the collision (*m*).

(*f*) For the rules in force at different dates, see Chapter II., *infra*, p. 52 *seq.*

(*g*) Regulations, 1910, Article 30: see *infra*, p. 484.

(*h*) 57 & 58 Vict. c. 60.

(*i*) *Infra*, p. 312.

(*k*) As to when the Regulations apply, see *infra*, p. 304 *seq.*

(*l*) *The Duke of Sussex* (1841), 1 W. Rob. 274; *The Gazelle* (1842), 1 W. Rob. 471, 476; *The*

Friends (1842), 1 W. Rob. 478; aff. 4 Moo. P. C. C. 314. Cf. *The Khedive* (1880), 5 App. Cas. 876, 909.

(*m*) *The Raithwaite Hall* (1874), 2 Asp. M. C. 210. In this case Sir R. Phillimore was considering the effect of local rules, but since the repeal of the statutory presumption of fault, the decision is applicable to a breach of the regulations.

Where no special circumstances exist to make the regulations inapplicable, they furnish the paramount rule for the decision of the question as to which ship is in fault in every case of collision. Public policy, as well as the best interest of all concerned, requires that they should be enforced in all cases to which they apply (*n*). Departure from them is justifiable only in one event; namely, where it is necessary in order to avoid immediate danger (*o*). It is not justifiable on the ground that, under the circumstances of the case, it would be better seamanship not to comply with them (*p*); or on the ground that by departing from them the violence of the blow would be lessened (*p*); or because both ships (tugs) are racing for a schooner to get the towage job (*q*). But though the regulations are the paramount rules of navigation, yet, where the usage of the place and the business and courses of particular vessels are obvious and well known, no seaman has a right to neglect the knowledge he has of the probable movements of other ships with reference to such usage. Thus, in New York harbour it is held that a vessel must act according to her knowledge of the course which a ferry-boat usually takes in making her slip (*r*). So where warps are to be expected and are commonly used in transporting vessels and shifting berths, a look-out for them is no more than reasonable (*s*). Although the regulations in ordinary cases afford a test of negligence, and in most cases proof of departure from them is equivalent to proof of negligence, they are not to be applied mechanically, to determine whether a ship is in fault for a collision. Even where a position of risk is established, and a particular Article is proved to have been applicable, a vessel will not be held in fault for non-compliance with it, if the time during which it was applicable was so short, or the circumstances so startling, that a seaman of ordinary skill, care, and nerve might reasonably be excused

The regulations the paramount rules of navigation.

(*n*) *New York and Liverpool U.S. Mail Steamship Co. v. Rumball*, 21 How. 372, 383. And see *The Byfoged Christensen* (1879), 4 App. Cas. 669, *infra*, p. 442; *The Voorwaarts and The Khedive* (1880), 5 App. Cas. 876.

(*o*) See below, Art. 27, as to the circumstances under which departure from the regulations is allowed.

(*p*) *The Voorwaarts and The Khedive* (1880), 5 App. Cas. 876, 895.

(*q*) *Latham v. Hamilton and Merriman Co.*, 63 Fed. Rep. 856.

(*r*) *The John S. Darcy*, 29 Fed. Rep. 644.

(*s*) *The Fulda*, 31 Fed. Rep. 351; but see *infra*, p. 10, as to custom not overriding the regulations.

for not having appreciated the situation in time to enable him to obey the law (*t*).

When regulations inapplicable, seamanship is the test of negligence.

Where the regulations are clearly inapplicable, as where the ship cannot take the step required without going ashore, or endangering herself or other vessels, the question which ship is in fault is tried, without regard to the regulations, by the ordinary rules of seamanship. Provided they are not inconsistent with the regulations, the rules or practice of seamen, although they have not the force of law, are equally binding with the regulations, and upon British and foreign ships alike (*u*). The regulations are framed, primarily, for the purpose of preventing collision between two ships navigating in the ordinary way upon definite courses. There are many cases to which they are inapplicable, and in such cases the ships must keep clear of each other by the exercise of ordinary care and seamanship. Thus, it has been held in America that the "crossing" rule does not apply to two steamships, of which one was backing stern foremost out of her slip in New York harbour and the other was on her course down the river (*x*). The Court intimated that the case was one of "special circumstances," and provided for by Art. 29. There is a similar decision as to the rule requiring a ship to keep her course and speed, where the ship in question was a New York ferry-boat about to "make her slip" (*y*).

Both ships must obey the regulations.

The regulations define the steps to be taken by each vessel, and they are not complied with unless each vessel takes the steps required of her. The neglect of one to comply with the regulations is no excuse to the other, if she fails to do what is required of her, although a collision would have been avoided if either had complied with the law (*z*).

Objects of the regulations and reasons

The object of the regulations is to prevent collisions and to minimise their effect (*a*). The rules are made not merely

(*t*) *The Voorwaarts* and *The Khedive* (1880), 5 App. Cas. 876, 902; *The Theodore H. Rand* (1887), 12 App. Cas. 247.

(*u*) As to the mode of proving matters of nautical skill and seamanship, see *infra*, p. 273.

(*x*) *The Servia*, 42 Davis, 14.

(*y*) *Walsh v. Brooklyn and New York Ferry Co.*, 68 Fed. Rep. 507.

(*z*) *The Araxes v. The Black Prince* (1861), 15 Moo. P. C. 122; *Little v. Burns* (1881), 9 Ct. of Sess. Cas. 4th ser. 118; *The Clara*, 49 Fed. Rep. 765.

(*a*) *The Voorwaarts* and *The Khedive* (1880), 5 App. Cas., per Lord Watson, at p. 903. Cf. *The Test* (1847), 5 Not. of Cas. 276.

for the sake of the vessel which has to observe them, but for the sake of other vessels which may be approaching, or may be manœuvring at close quarters, and who have every right and reason to suppose the rules will be observed, and none to suppose they will be broken (*b*). The rules should be adhered to closely, and no deviation from them will be justified, unless the circumstances distinctly make a deviation necessary; otherwise vessels would always be in doubt and doing wrong (*c*). for strict adherence.

The precautions required by the law to be taken where there is risk of collision must be taken in time to determine that risk (*d*). An alteration of the helm or other step taken in pursuance of the regulations, is no defence, unless it is shown that such precaution was taken at the proper time. To be effectual, precautions must be seasonable. If taken at an improper time they are not a compliance with the regulations, and are no defence. "If you adopt a measure at an improper time, it does not take away the culpability of not having done it before and prevented the accident" (*e*). The regulations must be complied with promptly and effectually.

A vessel is not justified in delaying to take precautions until the last moment; or in trusting to being able to "shave" clear of the other (*f*). If by doing so she frightens the other into taking a wrong step, and a collision occurs, she will be responsible for the entire loss (*g*). By a prompt compliance with the regulations, where a vessel is required to alter her course to avoid another, she apprises the latter of her ability and intention to comply with the regulations; whereas by delaying to take the required step, she may lead the other vessel to suppose that she is unable to comply with them, and cause her to take a step which may make a collision inevitable. Close shaving.

(*b*) *The Voorwaarts* and *The Khedive*, at pp. 895, 909; *The Mangerton* (1856), Swab. 120, 124; *The Great Eastern* (1864), 3 Moo. P. C. C. N. S. 31; *The Araxes v. The Black Prince* (1861), 15 Moo. P. C. 122, 131.

(*c*) *The John Buddle* (1847), 5 Not. of Cas. 387. It should be noted that at this date there was no statutory obligation to obey the rules: see *infra*, Chapter II. pp. 52 seq.; *The Telegraph, Valentine v. Cleugh* (1854), 1 Sp. 427.

(*d*) *The Trident* (1853), 1 Sp. 217, 222; *The Westhall*, 153 Fed.

Rep. 1010.

(*e*) *Per* Dr. Lushington in *The Stadacona* (1847), 5 Not. of Cas. 371, 374; *The Fenham* (1870), L. R. 3 P. C. 212 (as to lights). The view taken by the Courts of the United States is the same: *The Johnson*, 9 Wall. 146; *The Vanderbilt*, 6 Wall. 225; *The Syracuse*, 12 Wall. 167; *The Sunnyside*, 1 Otto, 208; *The America*, 2 Otto, 432.

(*f*) *The John Brotherick* (1844), 8 Jur. 276; *The Benefactor*, 14 Blatchf. 254.

(*g*) See *infra*, p. 12.

Where a ship, in order to show that she is free from blame, is required to prove that she altered her course at the proper time, it is not enough for her to show that her helm was altered at that time; she must prove that she answered her helm in time (*h*).

Convenience
no excuse for
non-compli-
ance.

Convenience can never justify the non-observance of a rule. For example, it is difficult for high speed vessels to reduce their speed to that required by the rules in a fog, but that difficulty is no excuse for excessive speed (*i*).

Custom
inconsistent
with regu-
lations no
excuse.

No alleged practice of seamen of avoiding other ships by taking measures other than and inconsistent with those required by the regulations can excuse a violation of the regulations, and no suggestion of danger from not following the practice, which may arise because a great number of people follow it, can be listened to as a reason for not following the rule (*k*). So where a custom was set up that merchant ships should keep out of the way of His Majesty's ships coming out of Devonport Harbour by the deep water channel, it was held not binding in law and no excuse for the non-observance of the regulations (*l*). Similarly it was held that a practice in the river Thames for vessels going down to keep to the North shore was superseded by the Trinity House rule to the effect that steamers approaching on crossing courses, involving risk of collision, should each port (*m*), and that no practice of the river as to ships keeping in or out of the strength of the tide and no consideration of convenience would justify a deviation from the express enactment as to keeping to the starboard side (*n*). So a custom to treat sailing ships in the Trades as close-hauled, when in fact they were a point or two free, was disregarded in applying the steering and sailing rules (*nn*).

(*h*) *The La Plata* (1856), Swab. 220.

(*i*) *The Campania*, (1901) P. 289.

(*k*) *The Sylph* (1854), 2 Sp. 75; *The Unity* (1856), Swab. 101; *The Hand of Providence* (1856), Swab. 107; *The Araxes v. The Black Prince* (1861), 15 Moo. P. C. 122; *The Velocity* (1869), L. R. 3 P. C. 44, 50; *Occidental, &c. Co. v. Smith*, 74 Fed. Rep. 261.

(*l*) *H.M.S. Topaze* (1864), 10 L. T. 659.

(*m*) *The Duke of Sussex* (1841),

1 W. Rob. 274; see also *The Friends* (1842), 1 W. Rob. 478; *The Gazelle* (1842), 1 W. Rob. 471. As to the principles adopted by the Privy Council in determining the application of the regulations to winding rivers, see *The Pekin*, (1897) App. Cas. 532; and *infra*, Art. 25, p. 421 *seq.*

(*n*) *The Sylph* (1854), 2 Sp. 75; *The Panther* (1853), 1 Sp. 31; Regulations, Art. 25.

(*nn*) *The Earl Wemyss* (1889), 6 Asp. M. C. 407.

When circumstances arise which clearly make any of the regulations applicable, it will be rarely that a vessel will be excused from non-observance of the rule on the ground that the danger seemed remote or doubtful, if a collision follows and she is unable to prove that her breach was no part of the cause. Thus, where the indications in a fog did not show unequivocally that the vessels would pass clear, though the danger seemed remote, a steamer going ahead was held to blame (o).

That danger appears remote and doubtful no excuse for non-observance of rule.

It is recognised in the regulations themselves that hard and fast rules never to be departed from under any circumstances would on occasion result in avoidable loss of life or property, for Article 27 directs that due regard shall be had to all dangers of navigation and collision, and to special circumstances rendering departure from the general rules necessary to avoid immediate danger (p). In the event of danger, not only may a departure from the rules be justified, but in a clear case becomes a duty. If by the exercise of ordinary care a collision could have been avoided, literal observance of the regulations affords no excuse; a man is not justified in doing nothing to avert a danger into which he is put by the wrongful act of another (q). But to be held to blame for not departing from a rule, the circumstances must be such that to a man of ordinary skill and intelligence it must have been perfectly clear, almost a certainty, that adhering to the rule would cause a collision (r). "You have no right to stand in a difficulty upon a right, though it may be a perfectly good right, obstinately, recklessly and regardless of the safety of others" (s). In all cases where there is danger of collision paramount authority must be given to the paramount obligation to obey the rules of good seamanship (t); but though "safety first" is an excellent rule on land and at sea when no rule applies or when it is doubtful

When departure from regulations is justified and when a duty.

(o) *The Aras*, (1907) P. 28; cf. *The Rondane* (1900), 9 Asp. M. C. 106.

(p) Regulations, 1910, *infra*, p. 432; see also note to Art. 21 and Art. 29.

(q) *The Jane Bacon* (1878), 27 W. R. 35, *per* Brett, L. J.

(r) *The Boanerges* and *The Anglo-Indian* (1865), 2 Mar. L.

C. O. S. 239; *The Ida* and *The Wasa* (1866), 15 L. T. 103; *Han- daysyde v. Wilson* (1828), 3 Car. & P. 528; *The Lady Anne* (1850), 15 Jur. 18.

(s) *The Legatus v. The Emily* (1865), Holt (Adm.), 217, 219.

(t) *The Grovehurst*, (1910) P. 316 (C. A.), *per* Buckley, L. J., at p. 334.

what rule applies, the application of the principle to cases where the action to be taken is clearly laid down in the regulations must be carefully watched (*u*), and limited to cases which are clearly exceptional, because "to leave to masters of vessels a discretion as to obeying or departing from the sailing rules is dangerous to the public; and that, to require them to exercise such discretion, except in a very clear case of necessity, is hard on the masters themselves" (*x*). While it is rarely that a vessel will be held to blame for not departing from the regulations (*y*), she will be more readily excused for a departure in an effort to save or minimise a collision, when she has been placed in a position of danger and difficulty by the negligent navigation of another and when persistent adherence would seem to a seaman of ordinary skill to render a collision inevitable or more disastrous (*z*).

A wrong step taken in the agony of the collision is not negligence.

If a vessel by her own fault makes a collision so imminent that it cannot be avoided except by extraordinary skill, nerve, or exertion on the part of the other ship, and a collision occurs, it will be held to have been caused by the former, and she will be liable for the entire loss (*a*). And the same principle applies in all cases of sudden and great danger whether caused by negligence or not. The law requires that a seaman should exhibit ordinary presence of mind and

(*u*) *The Test* (1847), 5 Not. of Cas. 276, per Dr. Lushington.

(*x*) *The William Frederick and The Byfoged Christensen* (1879), 4 App. Cas. 669. In this case the principle involved in *The Commerce* (1850), 3 W. Rob. 287, was approved, but the Court declined to apply it to the case under consideration: cf. *The Tasmania* (1890), 14 P. D. 53; 15 App. Cas. 223; *The Seaton* (1883), 9 P. D. 1; *The Immaganda Sara Clasina* (1850), 7 Not. of Cas. 582 (reversed on facts only, 8 Moo. P. C. 87).

(*y*) See *H.M.S. Sans Pareil*, (1900) P. 267.

(*z*) *The Benares* (1883), 9 P. D. 16; *The Khedive* (1880), 5 App. Cas. 876, 902.

(*a*) *The Nor* (1874), 2 Asp. M. O. 264; *The C. M. Palmer and The Larnax*, *infra*; *The Pyrus* and *The Smales* (1816), Holt. 40; *The*

Sisters (1876), 1 P. D. 117; *The Bywell Castle* (1879), 4 P. D. 219; *The William Frederick and The Byfoged Christensen* (1879), 4 App. Cas. 669; *The Voorwaarts and The Khedive* (1880), 5 App. Cas. 876. Cf. also *Clayards v. Dethick* (1884), 12 Q. B. 439; and per Lord Ellenborough, C. J., in *Jones v. Boyce* (1816), 1 Stark. 493, 495: "If I place a man in such a situation that he must adopt a perilous alternative (as jumping off a coach), I am responsible for the consequences." Amongst many American cases to the same effect are: *The Nichols*, 7 Wall. 656; *The Carroll*, 8 Wall. 302; *The City of Paris*, 9 Wall. 634; *The Lucille*, 15 Wall. 676; *The Favorita*, 18 Wall. 598; *The Falcon*, 19 Wall. 75; *The Sea Gull*, 23 Wall. 165; *The Mary Augusta*, 55 Fed. Rep. 343; *The Luzerne*, 157 Fed. Rep. 391.

ordinary skill; but it is manifest that at a moment of great peril a man may do, or omit to do, something which may contribute to the collision, without thereby showing himself deficient in ordinary skill, care, or nerve. Such an act or omission is not held to be negligence (b).

The following cases illustrate the principle above mentioned, that a wrong step taken in the agony of the collision will not necessarily cause the ship to be held in fault for the collision. Examples.

A sailing ship (c) in a thick fog sighted another at so short a distance that in a minute, or less than a minute, the ships were in collision. Her helm was altered, but the head-sheets, which had just been let go, were not hauled aft, nor were the lee braces let go, so as to assist her head in paying off. It was held that, even if the collision could have been avoided by the measures suggested, the time was so short that there was no negligence in their omission.

A steamship bound down the river Thames on a very dark night was rounding-to in Gravesend Reach before coming to an anchor. While rounding-to she ran into and sank a vessel at anchor without a riding light up. The instant the latter vessel was seen the engines of the steamship were stopped and reversed, but her anchor was not let go. It was held that, even if the collision could have been averted by letting go the anchor, the master of the steamship was not guilty of negligence, because, at the moment, it did not occur to him to let go his anchor (d).

But if a ship seeks to excuse herself for taking a wrong step, which, in fact, caused or contributed to the collision, upon the ground of sudden peril, she must show clearly that she was in no way responsible for the sudden peril (e).

(b) *The Sisters* (1876), 1 P. D. 117; *The Jesmond* and *The Earl of Elgin* (1871), L. R. 4 P. C. 1, 7; *The Marpesia* (1872), L. R. 4 P. C. 212; *Vennall v. Garner* (1830), 1 Cr. & M. 21; *The City of Antwerp* and *The Friedrich* (1868), L. R. 2 P. C. 25.

(c) *The Marpesia* (1872), L. R. 4 P. C. 212.

(d) *The C. M. Palmer* and *The Larnax* (1873), 2 Asp. M. C. 94; *The Eliabezth* and *The Adalia* (1870), 22 L. T. 74, is a similar case.

(e) See *The Bywell Castle* (1879), 4 P. D. 219, and the cases cited above. *The David Morris*, Brown, Ad. 273; *The Elizabeth Jones*, 5 Dav. 514.

Misleading lights; hailing or other embarrassing acts.

Upon the same principle, if a ship by carrying wrong lights, or by navigating in an improper or unusual manner, misleads or embarrasses another, she cannot attribute as a fault to the latter any act which was the probable result of her own negligence (*f*). So where a ship is hailed from another to take a particular course, and she obeys the hail, the other ship cannot be heard to say that the course was wrong, although, in fact, it caused the collision and was in violation of the regulations (*g*).

Breach excused where rule does not appear to apply.

There is another class of case resembling often the "agony of the collision" cases, in which a breach of the regulations is excused. Where a rule is in fact applicable, but the person in charge cannot by the exercise of ordinary skill and care know at the time that it is applicable, he is not to blame if he does not observe it (*h*). "When you speak of rules that are to regulate the conduct of people, those rules can only apply to circumstances which must or ought to be known to the people at the time. You cannot regulate the conduct of people as to unknown circumstances (*i*). Thus, where a ship close-hauled on the port tack bore up to a ship running free and so caused the collision, it was held she was not to blame, because she could not under the circumstances with reasonable care have known that the other ship was free (*k*).

Perils of the sea an excuse

No vessel is obliged to observe the regulations, if by so

(*f*) *The Rob Roy* (1849), 3 W. Rob. 190; *The Scotia*, 14 Wall. 170; *The Mary Hounsell* (1879), 4 P. D. 204; 40 L. T. 368.

(*g*) See *The Carolus Rotchers* (1837), 3 Hag. Ad. 343, note. In this case a ship close-hauled on the starboard tack hailed another close-hauled on the port tack to keep her luff. The latter did so, and a collision occurred. The first ship was held in fault. It is submitted that the decision would be the same at the present day, and that such a case is provided for by Art. 27. See also *Wilson v. Canada Shipping Co., The Lake St. Clair and The Underwriter* (1877), 2 App. Cas. 389; 3 Asp. M. C. 361; *The James Watt* (1844), 2 W. Rob. 270; *The Independence* (1860), 14 Moo. P. C. 103, 109; *The Huntress*,

2 Sprague, 61.

(*h*) *The Beryl* (1884), 9 P. D. 137 (O. A.); *The Moderation* (1863), 1 Moo. P. C. C. N. S. 528; *The Ceto* (1889), 14 App. Cas. 670; *The Knarwater* (1894), 63 L. J. Ad. 65; *The Memnon* (1889), 6 Asp. M. C. 488; *The Emmy Haase* (1884), 9 P. D. 81; *The Rob Roy* (1849), 3 W. Rob. 190, 195.

(*i*) *The Beryl* (1884), 9 P. D. 137, per Lord Esher, at p. 138. These words were quoted with approval by Lord Herschell in *The Theodore H. Rand* (1887), 12 App. Cas. 247, 250, and by Lord Fitzgerald in *The Ceto* (1889), 14 App. Cas. 670, 691. See also *The Dordogne* (1884), 10 P. D. 6.

(*k*) *The Theodore H. Rand* (1887), 12 App. Cas. 247.

doing she would put herself into serious danger (*l*), *e.g.*, of going ashore (*m*), or striking another ship (*n*).

The regulations do not apply and a breach of any of them, which is *primâ facie* applicable, is excused when a vessel is disabled (*o*) or prevented from complying with them by no fault of her own (*p*). The law does not require the impossible, so that when a vessel without previous negligence is not fully under control she must obey the regulations as well as she can, and is not to blame for not fully observing them (*q*). Thus, a fishing vessel with her nets out and showing the prescribed lights is not required to keep out of the way of an approaching unencumbered vessel, whether steam or sail; she is only required to take such precautions as are seamanlike under the circumstances, and it is the duty of the other vessel to keep clear (*r*). Similarly a tug with a tow is a partially encumbered vessel, and is not entire mistress of her movements; she may, therefore, in a proper case be relieved from strict compliance with the regulations and the other vessel be required to take steps, which would not be required if approaching an unencumbered vessel (*s*).

If a ship is negligently allowed to be at sea in a defective or inefficient state as regards her hull or equipment, and a collision occurs, which probably would not have occurred but for her defective condition, the collision will be held to have been caused by the negligence of her owners. Thus a collision caused by the giving way or inefficiency of the steering gear (*t*), the clamping of the reversing gear so that it cannot

for non-observance.

Inability to comply with regulations when an excuse.

Defective equipment.

(*l*) *The St. Cyran v. The Henry* (1864), 12 W. R. 1014; in *H.M.S. Sans Pareil*, (1900) P. 267, the *Earl Lothian* would, it is submitted, have been justified under the principle stated in the text in departing from Art. 21.

(*m*) *The Lucia Jantina v. The Mexican* (1864), Holt. (Ad.) 130.

(*n*) *The Concordia* (1866), L. R. 1 A. & E. 93.

(*o*) *The Sylph* (1854), 2 Sp. 75.

(*p*) *The Kjobenhavn* (1874), 2 Asp. M. C. 213, 216; cf. *The Chilean* (1881), 4 Asp. M. C. 473.

(*q*) *The Sylph* (1854), 2 Sp. 75, 81; cf. *The Blenheim* (1854), 1 Sp. 285.

(*r*) *The Grovehurst*, (1910) P.

316 (C. A.); *The Pitgavenny*, (1910) P. 215; *The Gladys*, (1910) P. 13.

(*s*) *The Challenge* and *Duc d'Aumale*, (1905) P. 198; *The Lord Bangor*, (1896) P. 28; *The American* and *The Syria* (1874), L. R. 6 P. C. 127; *The Independence* (1861), 14 Moo. P. C. 103; *The Cleadon* (1860), Lush. 158; *The Kingston-by-Sea* (1850), 3 W. Rob. 152.

(*t*) *The Virgo* (1876), 3 Asp. M. C. 285; *The Warkworth* (1884), 9 P. D. 20; *The Livina* (1871), 1 Asp. M. C. 204; *The Peru* (1857), 1 Pritch. Ad. Dig. 3rd ed. 1412; *The M. M. Caleb*, 10 Blatchf. 467; *The Allen Green*, 60 Fed. Rep. 459.

instantly be worked (*u*), the parting of chain cable or moorings (*x*), the coming home of an anchor that is too light to hold the vessel (*y*), the failure to employ a tug when necessary (*z*), the inefficiency of the tug (*a*), or improper trim such as to render her unmanageable and dangerous, may be held to be caused by the negligence of her owners in permitting her to be navigated in a condition dangerous to other ships. In such cases of defective equipment it is open to the owners to show that the defect in the gear was latent (*b*), or that they took reasonable care to send the ship to sea in a safe and efficient state (*c*); and if they satisfy the Court that such was the case they will not be liable.

Ship disabled
and un-
manageable
by her own
fault.

If a ship is by her own fault disabled or unmanageable, and a collision occurs in consequence, the question arises whether she is to be held in fault for the collision; in other words, whether her original negligence is negligence contributing to the collision. The cases upon the point are conflicting. Where a ship by her own negligence got ashore, and in coming off unavoidably did damage, it was held that her owners were liable (*d*). So where a vessel having lost her lights in a collision with one ship was afterwards in collision with another ship, it appears to have been the opinion of the Court that, if the first collision was caused by her own fault and the second collision was caused by the absence of proper lights, she must be held to be in fault for the second collision (*e*). On the other hand where a vessel was sunk in the Thames in a collision caused by her own negligence, and another vessel six hours afterwards struck on the wreck and was injured, it was held by the Court of Appeal, in the absence of proof of negligence subsequent to the first colli-

See also *The European* (1885), 10 P. D. 99 (steam steering gear "taking charge").

(*u*) *The Mexico*, 84 Fed. Rep. 504.

(*x*) See *The William Lindsay* (1873), L. R. 5 P. C. 338.

(*y*) *The J. H. Rutter*, 35 Fed. Rep. 365.

(*z*) *The Gertor* (1894), 7 Asp. M. C. 472.

(*a*) *The Ocean Wave*, *Marshall v. Moran* (1870), L. R. 3 P. C. 205; *The Belgic* (1875); 2 P. D. 57,

note; *The Julia* (1861), Lush. 224; *The Ratâta*, (1898) App Cas. 513.

(*b*) *The Virgo* (1876), 3 Asp. M. C. 285.

(*c*) *Moffatt v. Bateman* (1869), L. R. 3 P. C. 115.

(*d*) *Lords Bailiff Jurats of Romney Marsh v. Corporation of the Trinity House* (1870), L. R. 5 Ex. 204; *ibid.* 7 Ex. 247.

(*e*) *The Kjobenhavn* (1873), 2 Asp. M. C. 213. The facts were such as to render a decision upon the point unnecessary.

sion, that her owners were not liable for the second collision. "It seems clear to me," said Brett, L. J., "that no greater liability can exist against the defendants than if their steamship had sunk without negligence" (f). There is no doubt that both in the case of a ship disabled, and a ship sunk, whether by her own previous negligence or not, special and additional care and precautions are required on the part of those in charge to avoid doing injury to other ships (g). But that a ship sunk or disabled in a collision caused by her own negligence should afterwards, and without having been guilty of any further negligence, be held liable for a subsequent and distinct collision, would seem to be contrary to the principle that a wrongdoer is liable only for the reasonable consequences of his negligence.

It may happen that two or more collisions are so immediately and directly the result of one negligent act that the wrongdoer will be liable for the damage done in each collision, though after the first collision, the others were inevitable, and though, but for the first collision, the others would not have happened (h). Thus a ship, by her own negligence adrift in a crowded dock or harbour, would, it is submitted, be liable for all the damage done by her in successive collisions with other craft before she was brought up and secured. In such a case it would be immaterial that, after the first collision, the others were inevitable, or that, but for the first collision, the others would not have happened. The reasonable consequence of sending a ship adrift under such circumstances is that she will strike and injure other craft to leeward.

If a collision occurs between two ships, A. and B., by the fault of one of them, and A. or B., or both A. and B., whilst in collision, or in consequence of the collision, drive against and injure a third ship, C., C. can recover against the ship in

Three or more ships implicated.

(f) *The Douglas* (1882), 7 P. D. 151, 160. In this case *Lords Bailiff Jurats of Romney Marsh v. Corporation of the Trinity House* does not appear to have been cited.

(g) See *Secombe v. Wood* (1840), 2 Moo. & Rob. 290; *Brown v. Mallet* (1848), 5 C. B. 599; *White v. Crisp* (1854), 10 Ex. 312; *Kidson v. M^rArthur* (1878), 5 Ct.

of Sess. Cas. 4th ser. (Rettie), 936; *The Douglas, ubi supra*. See further as to the duty of those in charge of sunken ships, *infra*, pp. 103 *seq.*

(h) Such a case occurred in *The Creation* (1886), 5 Asp. M. C. 585, which came before the Court on limitation of liability.

fault for the first collision. But the ship that fouls her is not liable unless she was in fault either for the first or the second collision (*i*). If two ships, A. and B., are both in fault for a collision between one of them and a third ship, C., C. can proceed in Admiralty against either A. or B., or she can proceed against both of them, and she can recover the whole of her loss against either of them (*k*). Under the provisions of sect. 1 of the Maritime Conventions Act, 1911, where two vessels are to blame for a collision which has been caused to an innocent third vessel, the owners of one of the vessels in fault can recover from the other, as part of the "damage or loss" caused to them, the proportionate part of any sum recovered against them by way of damages by the owners of the third vessel (*l*). If C. is in tow of A. or B. the case is different; for the ship in tow is generally responsible for the fault of her tug (*m*).

Inevitable
accident.

A collision which could not by any care or skill have been prevented is accurately described as an inevitable accident. But the term "inevitable accident" in Admiralty is sometimes used in a wider and looser sense to describe a collision which could not have been prevented by ordinary care. Indeed, the word "inevitable" has found its way into judgments in which a plaintiff has failed to prove that a defendant was negligent. As far as possible, therefore, cases of true inevitable accident should be distinguished from cases in which negligence on the part of a defendant has not been proved. The phrase is not a happy one, for a collision which might have been avoided by the exercise of extraordinary skill and care is not inevitable (*n*).

In *The Europa* (*o*), Dr. Lushington states that inevitable accident is "where one vessel doing a lawful act without any intention of harm, and using proper precautions, unfortunately happens to run into another vessel." Again, it has

(*i*) *The Hibernia* (1858), 4 Jur. N. S. 1244; *The Sisters* (1876), 1 P. D. 117; *The Moxey*, Abbot, 73.

(*k*) *The Devonshire*, (1912) A. C. 634.

(*l*) *The Cairnbahn* (No. 1), (1914) P. 25.

(*m*) See *infra*, Chapter VIII. p. 193 *seq.*

(*n*) In the old cases the equivalent of inevitable accident seems to have been "*casus fortuitus*." In a pleading of the seventeenth century a collision without any special circumstances is stated to have occurred because "God so willed it"; Selden Soc. Ser., Vol. 11, p. lxxxi.

(*o*) (1850), 14 Jur. 627, 629.

been said, "to constitute inevitable accident, it is necessary that the occurrence should have taken place in such a manner as not to have been capable of being prevented by ordinary skill and ordinary prudence. We are not to expect extraordinary skill or extraordinary diligence, but that degree of skill and that degree of diligence which is generally to be found in persons who discharge their duty" (*p*). The Privy Council, adopting the language of Dr. Lushington, defined inevitable accident to be "that which a party charged with an offence could not possibly prevent by the exercise of ordinary care, caution, and maritime skill" (*q*), and this must now be regarded as an authoritative definition (*r*).

From the above considerations it is evident that to sustain the plea of inevitable accident it is not enough to show merely that the collision was inevitable at the moment of, or for some moments before, its occurrence. The weight of a ship and her momentum are so great that her rudder, and even her engines (in the case of a steamship) are frequently powerless to avert a collision for some time before the ships come together. It is not enough for a ship to show that, as soon as the necessity for taking measures to avoid collision was perceived, all that could be done was done. The question remains whether precautions should not have been taken earlier. When two ships are shown to have been in a position in which a collision was inevitable, the question is, by whose fault, if there was fault, did the vessels get into such a position? (*s*). Thus, if a vessel is proceeding at too great a rate of speed, or with no look-out (*t*), she cannot be heard to allege inevitable accident (*u*).

A collision may be caused by negligence though inevitable for some time before it occurs.

Where a collision is the result of inevitable accident the burden of proving that it was so does not in the first instance

Burden of proving inevitable accident.

(*p*) *The Thomas Powell and The Cuba* (1866), 14 L. T. 603. See also *The Maybey and The Cooper*, 15 Wall. 204, 215, for a similar statement by the Supreme Court of the United States.

(*q*) *Per* Sir J. Colville, *The Marpesia* (1872), L. R. 4 P. O. 212, 220, citing from *The Virgil* (1843), 2 W. Rob. 201. See also *The Lochlibo* (1850), 3 W. Rob. 310, 318.

(*r*) *The Schwan and The Albano*, (1892) P. 419.

(*s*) See *The Independence* (1860), 14 Moo. P. C. 103, 109; *The Despatch*, *ibid.* 83; *The Pennsylvania* (1871), 23 L. T. 55; *The America*, 2 Otto, 432.

(*t*) *The Twenty-One Friends*, 33 Fed. Rep. 190.

(*u*) See *per* Dr. Lushington, *The Juliet Erskine* (1848), 6 Not. of Cas. 633.

attach to the ship alleging it. But where a *prima facie* case of negligence is made out, as when the plaintiff's vessel has been run into when at anchor, then it lies on the ship alleging inevitable accident to prove it (x). Thus, in *The Merchant Prince* a vessel's steam steering gear jammed, and, in broad daylight, she ran into a ship at anchor. There was no proof as to why it jammed; and there was hand gear, which was not used. It was proved that the owners had been careful to provide good steering gear. Butt, J., held that the defendants, the owners, had discharged the burden, which was upon them, of proving that the collision was inevitable. This decision was reversed upon appeal, Fry, L. J., saying that to sustain the defence of inevitable accident, the defendants must "either show what was the cause of the accident, and show that the result of that cause was inevitable; or they must show all the possible causes, one or other of which produced the effect, and must further show with regard to every one of those possible causes that the result could not have been avoided" (y).

Vessel infringing the regulations cannot plead inevitable accident.

A vessel in default for not having lights, or for not complying with the regulations, cannot, when such non-compliance contributed to the collision, successfully plead inevitable accident. But such a defence may be good where the circumstances of the case made a departure from the regulations necessary, or where her inability to take the proper measures was caused by no fault of her own.

Collision inevitable so far as concerns the ship sued.

A collision may be an inevitable accident so far as the ship sued is concerned, although it was caused by fault elsewhere; as in the case of a ship which is thrown against another by the swell of a passing steamship, or by a third ship coming foul of her (z), or causing her suddenly to alter her course in order to avoid a fourth ship (a).

Disabled ship.

Where a ship is unable to take the proper measures to avoid a collision owing to her being disabled, or for some

(x) *The Bolina* (1844), 3 Not. of Cas. 208; *The Marpesia* (1872), L. R. 4 P. C. 212; *The Merchant Prince*, (1892) P. 179; *The Schwan* and *The Albano*, (1892) P. 419; *The Olympic v. H.M.S. Hawke*, (1913) P. 214, 280; *The Florence P. Hall*, 14 Fed. Rep. 408; and see *infra*, p. 40.

(y) (1892) P. 179; and see *The Indus* (1886), 12 P. D. 46.

(z) *The Sisters* (1876), 1 P. D. 117; *The Hibernia*, (1858), 4 Jur. N. S. 1244.

(a) *The Schwan* and *The Albano*, (1892) P. 419; *The Thames* (1874), 2 Asp. M. C. 512.

reason for which she is not responsible, it is the duty of the other ship to avoid her if she can. But a collision occurring in consequence of her disabled state will be held to be an inevitable accident, if the other vessel was ignorant of it, and was not in fault for not being aware of it, or for not keeping out of the way (b).

In the following cases the Courts have held that the collisions were the result of inevitable accident. It must, however, be pointed out again that the question before the Court in all these cases was, not whether the collision was inevitable, but whether it could have been avoided by ordinary care.

Instances of
inevitable
accident.

A vessel, close-hauled on the starboard tack, saw the red light of a vessel close-hauled on the port tack, a little on her port bow, and kept her course. The other vessel, having lost her head sails in a previous collision, was unable to bear up, and a collision occurred (c).

A steamer entering the Thames suddenly ran into a dense fog of which there was no warning, and at once proceeded to anchor, as was the proper course, the master doing his best to ascertain that there was no vessel in the vicinity. His vessel, however, came into collision with a ship at anchor whose sound signals were unavoidably not heard by the vessel about to anchor. It was held that the collision was the result of an unavoidable accident (d).

A ship, which had made fast by order of the port authority to a private buoy, was held not to be in fault for a collision caused by the parting of the band round the buoy (e). And in America the drawing of a "spile," to which the vessel had properly been made fast (f), was held inevitable accident.

In the absence of evidence of negligence on the part of the crew, the jamming of the cable round the windlass,

(b) *The John Buddle* (1847), 5 Not. of Cas. 387.

(c) *The Aim* and *The Amelia* (1874), 2 Asp. M. C. 96. As to a vessel disabled by her own fault, see *supra*, p. 16.

(d) *The Nador*, (1909) P. 300. If the vessel at anchor proves she was sounding the regular signals, it lies on the other vessel to show some reason or excuse for the

accident. The onus of proving that her signals were audible on the approaching vessel is not on the vessel at anchor: *The Valdes* (1915), 31 T. L. R. 144. As to hearing sound signals in fog, see also *The Curran*, (1910) P. 184.

(e) *The William Lindsay* (1873), L. R. 5 P. C. 338.

(f) *The Mary L. Cushing*, 60 Fed. Rep. 110.

when the anchor was let go, was held to be an inevitable accident (*g*).

The parting of a cable in a gale of wind (*h*), and of moorings in calm weather (*i*), has been held to be an inevitable accident. But if there is negligence in not letting go an anchor, or in not having an anchor ready to let go when the vessel is adrift, she cannot sustain the defence of inevitable accident (*k*).

Where a collision occurred in consequence of the breaking of part of the steering gear, there being a latent defect in the metal, it was held to be an inevitable accident (*l*). But if the gear is manifestly insufficient or weak, or has not been properly cared for (*m*), the defence of inevitable accident cannot be sustained (*n*).

Where a ship was entering a harbour, and owing to a combination of circumstances, namely less water than usual, a strong breeze, and a freshet, the vessel struck the jetty and did damage to it, it was held that her owners were not liable, as the above circumstances constituted force majeure (*o*).

A ship which had been ashore on a sand, was driving over it, and came into collision with another brought up in deep water to leeward of the sand. To have let go her anchor before she was clear of the sand would have been dangerous to herself, and without letting go while on the sand she could not keep clear of the ship at anchor. A collision which followed was held to be inevitable (*p*).

(*g*) *The William Lindsay*, *supra*; *The Peerless* (1860), Lush. 30. But see *The Agamemnon*, 1 Quebec L. R. 333, as to windlass carrying away.

(*h*) *The London* (1863), Br. & L. R. 32; 1 Mar. Law Cas. O. S. 398.

(*i*) *The Ambassador*, Ad. Ct., Feb. 12th, 1875, cited in *The Pladda* (1876), 2 P. D. 34, 37.

(*k*) *The Pladda* (1876), 2 P. D. 34; *The Kepler*, *ibid.* 40; *The City of Peking* (1888), 14 App. Cas. 40 (chain cable not bent); *The Woodford*, Court of Appeal, March 10th, 11th, 1905 (Shipping Gazette), where it was held that the master had not taken proper precautions to guard against a violent storm. As to such a plea by a ship which

has given another a foul berth, see *The Secret* (1872), 1 Asp. M. C. 318.

(*l*) *The Virgo* (1876), 3 Asp. M. C. 285.

(*m*) *The Altenower*, 39 Fed. Rep. 118 (not allowed to work off).

(*n*) *The M. M. Caleb*, 10 Blatchf. 467; *The Warkworth* (1884), 9 P. D. 20, 145; *The Indus* (1886), 12 P. D. 46; *The Merchant Prince*, (1892) P. 179 (steam steering gear failing to act); *The Olympia*, 61 Fed. Rep. 120 (parting of the wire tiller rope); *The Riversdale*, 53 Fed. Rep. 286, *aliter*.

(*o*) *The Boucau*, (1909) P. 163.

(*p*) *The Thornley* (1843), 7 Jur. 659. *The Buckhurst* (1881), 6 P. D. 152, is a very similar case.

A dumb barge in the Thames, driving with the tide, came into collision with a steamer going up against the ebb at the rate of two knots. There was evidence that the barge could not have been seen sooner than she was seen. In the absence of evidence of negligence on the part of the steamer, the collision was held to be an inevitable accident (*q*).

Where two ships, by no fault of their own, suddenly find themselves in a position in which a collision is imminent, and one of them omits to execute a manœuvre which possibly might have averted the collision, she will not necessarily be held in fault for not having taken the measure suggested. Where two large sailing-ships, one in the act of going about, and the other going free, sighted each other in a dense fog at a distance of less than 300 yards, and a collision occurred in less than a minute, it was held that the ship in stays was not in fault for not having hauled aft her head sheets to assist her helm, although if she had done so the collision might have been averted. The collision was held to be a case of inevitable accident (*r*).

In *The Resolution* (*s*), Sir J. Marriott held that a collision caused by "showring weather, the darkness of the night, and the small distance of the two ships and shortness of time in discovering each other, being close," was an inevitable accident.

In the American decisions there are numerous examples of cases of which the following are a few selected instances. American cases.

A vessel in the open sea overtook another at night, the darkness being so great that she could not see the vessel ahead in time to avoid her (*t*). A sailing-ship in a narrow channel being suddenly compelled to let go her anchor to save herself from going ashore, in consequence of the wind failing, a steamship close astern unavoidably ran into her (*u*).

A large steamer was entering a harbour by a course that was not the usual one, but which was a course she had a right to go. As she was rounding the stern of a hulk, she suddenly saw and ran into a schooner which the hulk had prevented

(*q*) *The Swallow* (1876), 3 Asp. M. C. 371.

(*r*) *The Marpesia* (1873), L. R. 4 P. C. 212.

(*s*) Marsd. Ad. Ca. 332; *The Atlanta*, 41 Fed. Rep. 639, was a

similar decision, in the case of blinding snow; *The Rebecca Shepherd*, 32 Fed. Rep. 926 (fog).

(*t*) *The Morning Light*, 2 Wall. 550, 557.

(*u*) *The Electra*, 6 Bened. 189.

her seeing before. The schooner, which had just cast off from her tug, was setting her sails and drifting with the tide in a helpless condition (*x*).

A vessel overtook and passed another, and was then suddenly hindered by ice; each vessel took all reasonable steps, but the vessel which had been overtaken ran into and damaged the one which had passed her (*y*).

A vessel properly moored was set adrift by six other craft driving on her, and did some damage (*z*). A craft set adrift by an extraordinary mass of ice (*a*), or an extraordinary flood (*b*), and doing damage, has been held not to blame for this reason.

A vessel in tow of a tug salvor in a thick fog, by reason of her disabled state, took a sudden sheer, and fouled the masts of a sunken ship, to which, it was alleged, she was taken needlessly near. It was held that, as between the owners of the sunken wreck and the tug, the damage to the former was an inevitable accident (*c*).

But where a schooner in a leaky condition, in order to avoid sinking in deep water, cast off from a wharf alongside which she was lying, and before she was got under command drove against another vessel, it was held that the collision was not an inevitable accident (*d*). In the case of a ship improperly attempting to pass another ashore in a narrow channel, it was held that in attempting to pass the ship ashore, she did so at her own peril (*e*). In this country it has been held that a ship driven from her moorings by another which came foul of her in a gale of wind, could not escape liability to a third ship against which she drove, because she omitted to let go a second anchor (*f*).

Negligence in
a salvor

If a vessel engaged in rendering salvage service to another negligently runs into the vessel she is assisting, she is liable for the damage; but she does not thereby forfeit her right

(*x*) *The Java*, 14 Wall. 189; *The Nova Scotian and The Quebec*, 2 Quebec, L. R. 1.

(*y*) *The Brandio*, 163 Fed. Rep. 435.

(*z*) *The Nora Costello*, 46 Fed. Rep. 869.

(*a*) *The Transfer* (No. 2), 56 Fed. Rep. 313.

(*b*) *Neel v. Blythe*, 42 Fed. Rep. 457.

(*c*) *The Edwin Hawley*, 41 Fed. Rep. 606.

(*d*) *Sherman v. Mott*, 5 Bened. 372; but see *The Chickasaw*, 41 Fed. Rep. 627.

(*e*) *The Merrimac*, 14 Wall. 199.

(*f*) *The Pladda* (1876), 2 P. D. 34; and see *The City of Peking* (1888), 14 App. Cas. 40, as to having a second anchor ready to let go.

to a sum which has been previously agreed upon as remuneration for the salvage service, unless the negligence is very gross. In such cases the Court regards error or negligence in the salvor less severely than in ordinary cases of collision (*g*). If the salvor, without negligence on her own part, is injured in a collision with the ship she is assisting, caused by negligence of the latter, she can recover for her loss (*h*).

It is an implied term of the ordinary towage contract, that each vessel shall be conducted with proper care and skill. The general rule is, that the tug is bound to obey the orders of the tow; but both as between themselves and as regards other ships the tug and her tow are each under the ordinary obligation to show proper skill and care in avoiding collision. Their respective duties and liabilities will be considered in Chapter VIII., below. or a tug.

It is not every act of negligence committed at or about the time of a collision that is actionable. To found a claim for damages on an act of negligence, whether a breach of the regulations or an unseamanlike act, it must be proved that it had some effect in bringing about the collision (*i*)—that it formed a link in the chain of causation ending in the collision. Thus a failure to give the appropriate signal denoting an alteration of course prescribed by Article 28, when the alteration is seen immediately by the other vessel, might not in fact contribute to the collision, though it would be a negligent act which might by possibility have contributed to it (*k*). Such an omission would not, since the repeal of section 419 (4) of the Merchant Shipping Act, 1894 (*l*), impose any liability. Actionable negligence.

There is sometimes difficulty in determining whether negligence of which a ship is proved to have been guilty at Negligence causing collision.

(*g*) *The C. S. Butler and The Baltic* (1874), L. R. 4 A. & E. 178. See also *The Thetis* (1868), L. R. 2 A. & E. 365; *The Diana* (1874), 2 Asp. M. C. 366.

(*h*) *The Mud Hopper* (1879), 4 Asp. M. C. 103.

(*i*) *The Tempus*, (1913) P. 166.

(*k*) See *The Hero*, (1911) P. 128, 144. The decision of Evans, P., and of the Court of Appeal was reversed by the House of Lords on the facts on the ground that ordinary good sense showed that *The Hero's*

alteration of course did mainly contribute to the accident: (1912) App. Cas. 300. In the Courts below it had been found that this alteration of course had been observed on *H.M.S. Blackwater* in ample time for the collision to have been averted by the exercise of ordinary skill and care, and that those in charge of that ship were solely responsible for the disaster.

(*l*) By the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 4 (1).

or about the time of the collision, or in some way connected with the collision, is negligence causing the collision. The general rule is that a wrongdoer is liable for all the reasonable consequences of his negligence. Whether a collision which occurs under circumstances brought about by previous negligence can be said to have been caused by that negligence, must be determined by the particular circumstances of the case (*m*).

Negligence causing the loss but not the collision.

But where the negligence is an immediate cause of the loss, it is material in an action to recover damages for that loss, although it is in no way a cause of the collision in which the loss occurred. "The cause of action in collision cases is not merely the fact of the ships having come into impact with one another, for that by itself is no cause of action, but that damage, in the sense of injury, was caused to the property of the plaintiffs by reason of that collision" (*n*). Thus where a collision is caused entirely by the negligence of ship A., and there would have been no damage to either ship or less damage but for an improper act of B., both ships are held to be in fault. It is no answer to the claim of a plaintiff, whose negligence caused the collision, for the defendant, whose negligence caused the loss, to say: True it is, there would have been no loss but for my improper act; but you are the person who caused the loss, for if your ship had not been improperly navigated there would have been no collision and no loss.

The Margaret.

In *The Margaret* (*o*) a dumb barge by her own negligent navigation came into collision with a schooner fast to a proper mooring buoy. The schooner was wholly free from blame in respect of the collision, but her anchor, which was hanging from her hawse pipe, with the stock above the water, pierced and sank the barge. This was an improper position for the anchor, and contrary to a bye-law made under a local Act in force in the Thames. But for the improper position of the schooner's anchor the barge would have suffered no injury.

(*m*) *Greenland v. Chaplin* (1851), 5 Ex. 243; *Catlin v. Hills* (1849), 8 C. B. 123, arose out of the same collision. Cp. *The Winstanley*, (1896) P. 297.

(*n*) *Per Brett, L. J., The Margaret* (1881), 6 P. D. 76. And

see *per Lindley, L. J., The Bermina* (1887), 12 P. D. 58, 88.

(*o*) (1881), 6 P. D. 76, followed in *The Kaiser Wilhelm II.* (1915), 85 L. J. P. 26; a case where the damage was augmented by the defendant's negligence and both held to blame.

The collision was at night, and it does not appear that those on the barge saw the schooner's anchor before the collision (*p*). It was held that both craft were in fault; and that the schooner was liable for half the loss of the barge. In the Court below it had been held that the barge could not recover anything, she being alone in fault for the collision. This decision was varied by the Court of Appeal on the ground above stated—namely, that though the negligence of the schooner did not contribute to the collision, it did contribute to the cause of action, namely, the loss to the owners of the barge (*q*).

On the other hand, the maxim *causa proxima non remota spectatur* applies to distinguish negligence for the consequences of which a defendant is liable from that which is merely collateral and immaterial upon the question of liability (*r*). Negligence such as will attract liability cannot be established merely by showing that, but for a previous improper act of the defendant, the collision would not have occurred. The act complained of "must have some proper connection, as a cause, with the damage which followed, as its effect" (*s*). Whether this proper connection exists between the act complained of and the loss is a question of fact (*t*).

Causa proxima non remota spectatur.

A ship, in bad weather, was in a difficult position in Dover Bay getting in her anchors, which were foul, in order to get to sea, and did not take the assistance of a tug, as she ought to have done. She consequently drove against the pier, and the tug, which she then took to tow her clear, parted the tow rope, in consequence of the heavy sea, and she drove against and injured the plaintiff's groyne and sewer outfall. It was held that the damage was caused by her negligence in not taking a tug in the first instance (*u*).

(*p*) This appears to be the fact which Gorell Barnes, J., relied upon to distinguish *The Monte Rosa*, (1893) P. 23, from *The Margaret*.

(*q*) Cp. *The Scotia* (1890), 6 Asp. M. C. 541; *The Dunstanborough*, (1892) P. 363, note; and dist. *The Hornet*, *ibid.* 361; *Sills v. Brown* (1840), 9 Car. & P. 601, and *The Gipsy King* (1847), 2 W. Rob. 537, so far as they are inconsistent with *The Margaret*, would not, it seems, be now followed.

(*r*) *Spaight v. Tedcastle* (1889), 6 App. Cas. 217, 219, per Selborne, C., and Lord Blackburn, *ibid.* p. 226.

(*s*) Per Selborne, C., *ubi supra*; see *The Hero*, (1911) P. 128, 145.

(*t*) See *Tuff v. Warman* (1857), 2 C. B. N. S. 740; (1858), 5 C. B. N. S. 573; *Milwaukee Rail. Co. v. Kellogg*, 4 Otto, 469.

(*u*) *The Gertor* (1893), 7 Asp. M. C. 472. Cf. *The Annot Lytle* (1886), 6 Asp. M. C. 472. In an American case, *Slyfield v. Penfold*,

The question as to what are the consequences of a negligent or wrongful act for which the wrongdoer is liable was much discussed in the case of *Clark v. Chambers* (x). The rule accepted by the Court (y) was, that an action would not lie where the loss, although arising from an unlawful or negligent act of the defendant, did not immediately flow from it, and was not the reasonable, probable, or likely result of it. But a negligent act may be the proximate cause of loss, although, but for the wrongful act of a third party, there would have been no loss (z).

No difference between the rules of law and Admiralty as to what is negligence.

The question whether a particular act of negligence was a cause of the loss, so as to make the person charged with negligence responsible for the loss, must, it would seem, be answered in the same way, whether it is the act of a plaintiff or of a defendant; whether the negligence of other parties contributed to the loss or not; and whether the action is at common law or in Admiralty (a). "There is no difference between the rules of law and the rules of Admiralty to this extent, that where any one transgresses a navigation rule, whether it is a statutory rule or whether it is a rule that is imposed by common sense, what may be called the common law, and thereby an accident happens of which that transgression is the cause, he is to blame, and those who are injured by the accident, if they themselves are not parties causing the accident, may recover both at law and in Admiralty" (b). The only case which seems to point to

66 Fed. Rep. 362, the stranding of a schooner was held to have been caused by a rival tug wilfully preventing the tug engaged in getting the tow line on board from saving the schooner.

(x) (1878), 3 Q. B. D. 327; see the rule affirmatively stated by the Master of the Rolls in *Re London, &c. Railway and Trustees of Gower's Walk Schools* (1890), 24 Q. B. D. 326, at p. 329.

(y) *Per* Pollock, C. B., in *Greenland v. Chaplin* (1851), 5 Ex. 243, 248; and by the Exchequer Chamber in *Sharp v. Powell* (1872), L. R. 7 C. P. 253. See also *Lawrence v. Jenkins* (1873), L. R. 8 Q. B. 274; *Sneesby v. Lancashire and Yorkshire Rail. Co.* (1874), L. R. 9 Q. B. 263.

(z) *Englehart v. Farrant*, (1897) 1 Q. B. 240; *McDowall v. Gt. Western Rail. Co.*, (1902) 1 K. B. 618. Cf. *The Egyptian*, (1910) P. 38, where the negligence of a servant of the defendant subsequent to the collision caused an increase of the original damage. In *The Jackson*, 58 Fed. Rep. 607, two ships were held liable for damage to a third, although one could with ordinary care have avoided the consequence of the negligence of the other.

(a) See *per* Campbell, C., *The Friends* (1844), 4 Moo. P. C. 314; *per* Lord Blackburn, *Cayzer v. Carron Co.* (1883), 9 App. Cas. 873, 880.

(b) *Per* Lord Blackburn (1883), 9 App. Cas. 880.

there being any difference between the rules of law and Admiralty as to what is negligence causing the loss is *The Fenham* (c), in which there are expressions of Lord Romilly which might be taken to mean that infringement of a statutory rule of navigation is to be taken as a cause of the collision, unless the person charged proves the contrary. But in that case the Court was not dealing with the question of what amounts to negligence, but with the shifting of the burden of proof on an infringement being established.

By sect. 1 (1) of the Maritime Conventions Act, 1911 (d), it is enacted:—

Effect of
contributory
negligence.

1.—(1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
- (b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and
- (c) nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

Before this Act the apportionment of loss which followed a decision of “both to blame” did not depend upon any statutory enactment but on the rule in force in the Court of Admiralty, applied to all actions for damages occasioned by collisions between vessels by sect. 25, sub-sect. 9 of the Judicature Act, 1873 (e). The Admiralty rule in the form in which it was first stated in any reported case, was that

(c) (1871), L. R. 3 P. C. 212.
(d) 1 & 2 Geo. 5, c. 57.

(e) Repealed by sect. 9 (3) of the Maritime Conventions Act, 1911.

where there had been a want of due diligence or skill on both sides, the loss must be apportioned (f). By subsequent decisions referred to below this rule has been interpreted as being the same as the common law rule as to contributory negligence, except as to the consequences to the plaintiff, who when contributory negligence was found against him could recover half his loss in Admiralty, but bore the whole at common law (g).

The right to recover anything when contributory negligence has been proved now depends on the construction of the section quoted above, and the question whether the words "loss or damage caused by the fault of two or more vessels" makes any alteration in the law must be decided. It is submitted that they do not and that "provision of law" in proviso (c) includes principles and rules legally enforceable, whether by virtue of statutory enactment or otherwise.

No difference
between
Admiralty
and common
law as to
what is
contributory
negligence.

It is probably now settled that there is no difference between the rules of Admiralty or common law as to what amounts to contributory negligence affecting the right of the plaintiff to recover, but whereas "the rule of Admiralty is that if there is blame causing the accident on both sides, they are to divide the loss . . . the rule of law is that if there is blame causing the accident on both sides, however small the blame may be on one side, the loss lies where it falls" (h).

It has been suggested (i) that the class of cases of which *Davies v. Mann* is the best known example, have no application in Admiralty; and there are cases which appear to give some support to the contention. The facts of *Davies v. Mann* (k), the well-known "donkey case," were shortly these:—The owner of a donkey, which had been negligently left hobbled and unguarded on a highway, sued the defen-

(f) *Per* Lord Stowell (then Sir Wm. Scott), *The Woodrop Sims* (1816), 2 Dods. 83, 85.

(g) See *Cayzer v. Carron Co.* (1884), 9 App. Cas. 873, 881.

(h) *Per* Lord Blackburn, *Cayzer v. Carron Co.* (1884), 9 App. Cas. 873, 881.

(i) Apparently as recently as 1911. See *The Hero*, (1911) P. at p. 145. The decision of the

House of Lords ((1912) App. Cas. 300), though based on the facts only without any expressed opinion on the law, would seem to give support to the suggestion. But it is submitted that the law is as stated in the text, and that some other explanation is to be found for the decision of the House of Lords.

(k) (1842), 10 M. & W. 546.

dant, by the negligence of whose servant in driving along the highway at too rapid a speed the donkey was run over and injured. It was held that the donkey-owner could recover, his negligence notwithstanding. The suggestion is, that in a case of collision between ships, negligence, such as that of the donkey-owner in *Davies v. Mann*, would render the shipowner liable, although no collision would have occurred if the other vessel had been navigated with ordinary care. *The Fenham* (l) and *Hay v. Le Neve* (m) have been cited as authorities to this effect. Again, in an Irish case (n), it was doubted whether in Admiralty the doctrine of *Davies v. Mann* had any application. In America it seems to have been held that, in cases of unequal fault, the gross fault is the cause of the loss, and that the slight fault is immaterial—"did not contribute" (o). In one case (p) it was said expressly that the common law doctrine of contributory negligence did not apply in Admiralty. So where a collision made imminent by the gross fault of A., might have been avoided by B., the loss was divided between A. and B. (q).

But it is clear that there is no difference between the rules of law and of Admiralty (r) as to what amounts to negligence causing collision; and that, before a vessel can be held to be in fault for a collision, negligence causing or contributing to the collision must be proved. Thus, in *Cayzer v. Carron Co., The Margaret* (s), a vessel infringed a statutory rule of

(l) (1871), L. R. 3 P. C. 212.

(m) 2 Shaw's Scotch App. Cas. 395.

(n) *The Meteor* (1875), Ir. Rep. 9 Eq. 567.

(o) *The Lord O'Neill*, 66 Fed. Rep. 77; *The Willamette*, 70 Fed. Rep. 874; *The Atlas*, 3 Otto, 302.

(p) *The Daylesford*, 30 Fed. Rep. 633.

(q) *The Pegasus*, 19 Fed. Rep. 46; *The Maria Martin*, 12 Wall. 31. Qu. was this the view of the House of Lords in *The Hero*, (1912) App. Cas. 300.

(r) See per Lord Blackburn, *Cayzer v. Carron Co. (The Margaret)* (1884), 9 App. Cas. 873, 882. In *The Khedive* (1880), 5 App. Cas. 870, 892, it was assumed by Lord Blackburn that *Davies v.*

Mann applied in Admiralty. See also *The Hero*, (1911) P., at p. 145, and in C. A., at p. 151; *The Highland Loch*, (1911) P. 267, 269.

(s) (1883), 9 App. Cas. 873; followed in *H.M.S. Sans Pareil*, (1900) P. 267. Dist. *The Ovingdean Grange*, (1902) P. 208; and note that there was no appeal by *The Ovingdean Grange* in that case. *The Edgewater*, 65 Fed. Rep. 527; *The Portiz*, 64 Fed. Rep. 811; *The Clara*, 55 Fed. Rep. 1021; *The Britannia*, 34 Fed. Rep. 546, on app. 46 Dav. 130; *The Francis*, 44 Fed. Rep. 510; *The Titan*, 23 Fed. Rep. 413; *Andus v. The Saratoga*, 1 Fed. Rep. 730, are American cases similar to *Cayzer v. Carron Co.*

navigation, which required her to wait under a point in the river until the other ship passed, and was in that respect guilty of negligence; and without that negligence, other circumstances being the same, the collision would not have happened; yet it was held that this negligence was not a cause of the collision. The decision in such a case will be the same, with regard to the liability of the ship in question, either for the whole or part of the loss, whether the other ship is in fault or not. In *Cayzer v. Carron Co.*, the one ship was held to be in fault, because with ordinary care she could have avoided a collision, notwithstanding the negligence of the other; and it was for this reason that the negligence of the latter was held not to be a cause of the collision. In *Spaight v. Tedcastle (t)*, the question was whether the owners of a ship in tow, which had negligently permitted her tug to go too close to a bank, were prevented by the doctrine of contributory negligence from recovering from the owners of the tug damages for injury sustained by the subsequent fault of the tug in altering her course so as to put the ship ashore on a bank. It was held that, though those in charge of the tow had negligently allowed the tug to take the tow too close to the bank, yet, since the tug could with proper care, notwithstanding the negligence of the tow, have kept the tow clear of the bank, and had by an improper alteration of the helm caused the tow to go ashore, the tug was liable. So in *The Monte Rosa (u)*, a tug by her own fault steered a course which brought her into collision with the anchor of a steamship, which the latter was, contrary to the Thames rules, carrying over her bows not stock awash, and was holed by the anchor. It was held that, since the tug could with ordinary care have kept clear of the steamship, she was alone in fault, and could recover nothing. *The Lord Savmarez (x)*, an early case, is to the same effect as *Cayzer v. Carron Co.* There a vessel recovered full damages, though in a fog she was carrying too great a press of sail, and was proceeding at too great a rate of speed. The

(t) (1881), 6 App. Cas. 217.
 (u) (1893) P. 23.

(x) (1848), 6 Not. of Cas. 600;
 cf. *The Argo* (1857), Swab. 462;
The Swanland (1855), 2 Sp. 107.

decision proceeded upon the same grounds—that the defendant could with ordinary care have avoided the collision, notwithstanding the negligence of the plaintiff.

Hay v. Le Neve and *The Fenham* are not inconsistent with *Cayzer v. Carron Co.* and *The Lord Sawmarez*. The facts in those cases differ from those in *Davies v. Mann* in this—that the negligence of the plaintiffs in the former cases was such that the defendants could not with ordinary care have avoided its consequences; whereas in *Davies v. Mann* the defendant could with ordinary care have avoided the donkey (y). But though it may be possible to reconcile some of the “both to blame” cases with *Davies v. Mann*, it would probably be found impossible to reconcile all of them. Many Admiralty cases (z) have been decided without sufficient consideration of the question whether the negligence found against each ship was negligence contributing to the collision. For example, in *The Marcia Tribou*, an American case, a schooner in the daytime ran down a sloop brought up in an improper place. Both ships were held in fault, and the loss was divided (a). There are many recent American cases to the same effect (b).

Now that the statutory presumption of fault has been repealed by the Maritime Conventions Act, 1911, it is possible that the question what is in fact the proximate cause will fall to be decided more often than heretofore, but that the result will be a great diminution in the number of decisions of “both to blame” seems unlikely, for “the difficulty of the task of manœuvring ships of various kinds and dimensions in uncertain states of weather or tide and in the unforeseen and unforeseeable dangers which are met upon the waters must always be regarded; and it must often

(y) *Dowell v. General Steam Navigation Co.* (1855), 5 E. & B. 195; and *Morrison v. General Steam Navigation Co.* (1853), 8 Ex. 733, are cases with regard to absence of lights. In the former, the ship without lights was held in fault; in the latter, not.

(z) E.g., *The United States* (1864), 12 L. T. 33, where one ship was in fault under the rule in *Davies v. Mann*, and yet the

other was held to be also in fault.

(a) 2 *Sprague*, 17; *The S. Shaw*, 6 Fed. Rep. 93; *The Milligan*, 12 Fed. Rep. 338, are similar cases.

(b) Cf. *The Richmond* and *The E. Heipershausen*, 63 Fed. 1020; *The Anerly*, 58 Fed. 794; *The Marion*, 56 Fed. 271; *The Premier*, 51 Fed. Rep. 766 (bad riding light and excessive speed, or bad lookout in the other ship).

happen when two ships are at fault that it is impossible to say that one of them without the aid of the other could avoid an accident, or that the fault or negligence of one is the proximate cause, so that it has to be decided that the combined negligence of both was the common cause, and that the 'both to blame and division of damages' principle is to apply" (c). The test here suggested, if one ship without the aid of the other could have avoided the collision and failed, she alone is to blame, affords a useful guide in many cases to the determination of where liability rests.

Difficulties
created by
judicial
expressions
of the law.

Confusion has been caused by the language used in some of the cases with regard to contributory negligence. In *Radley v. London and North Western Railway Co.* (d), it is stated by Lord Penzance that, "The plaintiff in an action for negligence cannot succeed, if it is found by the jury that he has himself been guilty of any negligence or want of ordinary care which contributed to cause the accident." But "though the plaintiff may have been guilty of negligence, and although that negligence may in fact have contributed to the accident, yet if the defendant could in the result by exercise of ordinary care and diligence have avoided the mischief which happened, the plaintiff's negligence will not excuse him," i.e. the defendant. *Davies v. Mann* and *Tuff v. Warman* (e) are cited as establishing this. On the other hand, in *Dowell v. General Steam Navigation Co.* (f), Lord Campbell, C. J., said—"There" (in *Davies v. Mann*), "although without the negligence of the plaintiff the accident would not have happened, the negligence is not supposed to have contributed to the accident within the rule upon this subject; and if the accident might have been avoided by the exercise of ordinary care and skill on the part of the defendant, to his gross negligence it is entirely ascribed, he, and he only, proximately causing the loss." It is not easy to reconcile these views with regard to the negligence of the plaintiff in *Davies v. Mann*. The question whether a specified act of negligence is a cause of the accident is a ques-

(c) *The Hero*, (1911) P. 128,
145, per Evans, P.

(d) (1866), 1 App. Cas. 754.

(e) (1859), 5 C. B. N. S. 573;
see the judgment of Cresswell, J.

(1854), 26 L. J. C. P. 263, 267.

(f) (1855), 5 E. & B. 195.

tion of fact and not of law (*g*). *Davies v. Mann* and the cases following it seem to show that even where, as matter of fact, an act of negligence of A. did contribute to the accident, the other party (B.) will (as defendant) be liable for the whole loss, or (as plaintiff) will be unable to recover, if he could with ordinary care have avoided the accident, notwithstanding the negligence of A. (*h*).

The difficulty may be put in another way. Did *Davies v. Mann* decide that, assuming contributory negligence in the plaintiff, he could recover, notwithstanding; or that, though there was contributory negligence in fact, there was none in law? *Radley v. London & North Western Railway Co.* points to the former as the correct view of the case; *Cayzer v. Carron Co.* (*i*) looks the other way. There Lord Blackburn appears to have considered that if the plaintiff's negligence did in fact contribute to the collision he would be liable; and that in *Davies v. Mann* there was no contributory negligence.

But the difficulty is rather one of words than of substance: for, with perhaps one exception, the cases agree in this, that negligence in one party is immaterial, if by ordinary care the other could, notwithstanding that negligence, have avoided the accident, or as it was expressed in *The Hero* (*k*),

(*g*) See *per* Lord Blackburn (1884), 9 App. Cas. 879. But see *contra*, *per* Williams, J., *Tuff v. Warman* (1857), 2 C. B. N. S. 740, 758. *The Sans Pareil*, (1900) P. 267, is a remarkable instance of the rule in *Davies v. Mann*; although Vaughan Williams, L. J., thought that, owing to an admission in the Court below, the rule did not apply: *ibid.* p. 288.

(*h*) Cf. *The Argo* (1857), Swab. 462.

(*i*) (1884), 9 App. Cas. 873; see also *Spaight v. Tedcastle* (1881), 6 App. Cas. 217, 219, *per* Lord Blackburn.

(*k*) (1911) P. 128, 147, 151; cf. Pollock on Torts, 6th ed. 441 *seq.* Contributory negligence of the plaintiff does not prevent him from recovering; he does not recover because the negligence of the defendant was not the proximate (or decisive) cause of the loss. The exception mentioned above is *The Vera Cruz* (No. 1), 9 P. D. 88. In that case Butt, J., appears to

have questioned the dictum of Lord Penzance, *supra*, p. 34. If the law be as there stated it would, he thought, put an end to the doctrine of contributory negligence altogether; since, in every case where there is contributory negligence on the part of the plaintiff, there is, *ex hypothesi*, negligence on the part of the defendant. It is submitted that what was meant by Lord Penzance was ordinary care and diligence on the part of the defendant "in the result," *i.e.*, taking into consideration the negligence of the plaintiff and the circumstances existing after or by reason of it; or, as expressed by Lord Blackburn in another case, "proper care, subsequently exerted"; *Spaight v. Tedcastle* (1881), 6 App. Cas. 217, 226; see also *per* Lord Watson, *Cayzer v. Carron Co.* (1884), 9 App. Cas. 873, 886; *per* Wightman, J., *Tuff v. Warman* (1857), 5 C. B. N. S. 573; *per* Lord Campbell. Cf. *per* Lord Watson in *Wakelin v. Lon-*

if there was no such emergency created by the negligence and bad navigation of the one ship, as might not have been successfully met by ordinary skill and care on the part of those in charge of the other.

Result of the cases.

The result of the cases, therefore, seems to be that (*l*)—(1) a ship, A., may recover full damages against the other, B., where the collision was caused entirely by the negligence of B.; including the case where the collision would not have occurred but for negligence of A., provided B. could with ordinary care have avoided it; (2) subject to rule (3) A. can recover nothing, if with ordinary care exercised up to the moment of collision she could have avoided it; (3) A. can recover half damages, although with ordinary care exercised up to the moment of collision she might have avoided it, if B. by the exercise of like (*m*) care might have avoided it; (4) in the last case B. recovers half damages.

The case of both to blame.

The above statement of the case in which the loss is divided is put forward with some doubt. Lord Blackburn has stated the Admiralty rule as follows (*n*):—"It may well be that both parties are guilty of a neglect of duty, and that,

don and South Western Rail. Co. (1886), 12 App. Cas. 41: "If by the use of ordinary caution he (the plaintiff) might have avoided the injury, and did not, he is not entitled to recover damages." The decision of Butt, J., in *The Vera Cruz* became ineffectual by reason of *The Vera Cruz* (No. 2) (1884), 10 App. Cas. 59.

(*l*) This statement differs in words, but, except as to (3), not in substance from that contained in some earlier editions of this work. As to (3) there seems to be no authority for the suggestion that the negligence of one party can throw upon the other the duty to exercise more than ordinary care, or that under ordinary circumstances extraordinary care is required, and that its absence is to be treated as negligence. There may, of course, be circumstances (as at a launch) where the utmost possible precautions are no more than ordinary care requires. Cf. *The Ovingdean Grange*, (1902) P. 208; and *per* Lindley, L. J., *The Bernina* (1887), 12 P. D. 58, 89; and *per* Lord Esher, M. R., *ibid.*

p. 61, for statements of the law as to contributory negligence. Rule (2) was adopted and applied by Barnes, J., in *The Monte Rosa*, (1893) P. 23, 30. Cf. *The Altair*, (1897) 1 P. 105; *The Hero*, (1911) P. 128.

(*m*) Like in degree or character, or simultaneous; see *infra*, p. 37.

(*n*) This dictum occurs in a dissenting opinion of Lord Blackburn in *Slattery's Case* (1878), 3 App. Cas. 1155, 1206—one of the "level crossing" railway cases which have given rise to much difference of judicial opinion. Cf. the opinion of Brown, J., in *The Nereus*, 23 Fed. Rep. 457, where *Cayzer v. Carron Co.* was discussed: "Where the earlier cause and the later cause are both proximate and direct, both vessels are liable; for it is unreasonable that a fault in one vessel tending directly to a specific collision should go blameless, merely because it was the first fault, or merely because the other vessel did not do all she might have done to avert the consequences of the other's fault."

if either had used reasonable care and skill, the collision would have been avoided. In such a case the maritime law, which is followed in the Admiralty, apportions the joint damage" (o). It is not easy to reconcile this dictum with *Cayzer v. Carron Co.* or with *The Monte Rosa* (*supra*, p. 32), in neither of which cases were the damages divided, though in both it would seem that "if either had used reasonable care and skill" the loss would not have happened. In both the negligence that was prior in point of time was held not to have contributed to the loss. If the definition of the case of "both to blame" suggested upon the last page is correct, it confines it within narrow limits. It seems that the negligence on the part of both ships, which causes the loss to be divided, must be acts or omissions either concurrent in time, or identical in character, or equal in degree of fault in the words of Lindley, L. J. (p)—"as much want of reasonable care on A.'s part as on B.'s." A few such cases may be found in the books. A schooner (q) in New York harbour, contrary to the local regulations, brought up off the mouth of a slip. She was requested by a steamship about to back out from the slip to move, but refused. The steamship attempted to get under way and fouled her. It was held that both ships were in fault. It would seem that here more than ordinary care was required on the part of the steamship; and that, having voluntarily undertaken the risk of moving, the utmost precautions on her part were no more than reasonable (r). Two ships at anchor both started their anchors, drove near each other, and eventually came into collision. It was held that both were in fault, since either might have taken a tug and avoided the collision (s). Two tugs (t) were racing for

(o) *The Dunstanborough*, (1892) P. 363, note, seems to have been decided in accordance with this dictum.

(p) *The Bernina* (1887), 12 P. D. 58, 89. Cf. *per* James, L. J., in *The Margaret* (1881), 6 P. D. 76, "both parties are equally to blame."

(q) *The Westernland*, 24 Fed. Rep. 703.

(r) Cf. *The George Roper* (1883), 8 P. D. 119. *The Cachapool* (1882), 7 P. D. 217, may be

distinguished on the ground that the launch there could not reasonably be postponed.

(s) *The Arran*, Cook, V. Ad. Rep. Quebec, 353.

(t) *Latham v. Hamilton and Merriman Co.*, 63 Fed. Rep. 856. In *The Jesse Spaulding*, 50 Fed. Rep. 583, one of the tugs which attempted to cross the other before she was clear, and forced her into collision with the third ship, she was held alone in fault. Cf. *The Chattahoochee*, 173 U. S. 540 (both ships going too fast in fog).

a job. One forced the other into collision with the third ship. It was held that both were in fault. The case of both ships having no look-out, or of two ships bringing up or mooring at the same time too close to each other (*u*), or rounding a blind corner without knowing whether there are other craft in the way or not (*x*), may be suggested as cases where the fault is equal; and *The Ovingdean Grange* (*y*) seems to have been dealt with by Sir Francis Jeune, P., as coming within this category. But until the decision in *Cayzer v. Carron Co.* there had been little discussion in any of the cases as to the exact limits of the rule of division of loss, and, perhaps, the law on the point is not yet finally settled, though, as the action for damages occasioned by collision between vessels is no more than an action for damages occasioned by the negligence of the defendant, it seems unlikely that the principles applicable to actions for negligence will be substantially modified. The statutory rule which imputed fault to a ship which infringed the regulations added largely to the number of "both to blame" cases, by reason of the impossibility in such cases of proving that the collision was caused by the negligence of the other ship alone (*z*).

Damage, but
no collision.

Where by the negligent navigation of one ship a collision occurs between two others, or another ship is damaged, either by collision or in any other way, the owners of the ship in fault are liable at law, and the ship, it seems, is liable in Admiralty (*a*). Thus, a steamship that sank another craft

(*u*) *The Greenpoint*, 31 Fed. Rep. 231.

(*x*) *The Gamma*, 103 Fed. Rep. 708.

(*y*) (1902) P. 267. Observe that there was no appeal by *The Ovingdean Grange*.

(*z*) The effect of the statutory rule probably caused the matter not to be fully discussed in *The Sandhill*, (1894) App. Cas. 646. There A., one of two steamships proceeding in the same direction nearly abreast, wrongfully starboarded across the course of the other, B. If B. had not been so intent on cutting out A., and had

at once reversed, there would probably have been no collision. Both ships were held in fault, upon what ground does not clearly appear. The statute was not relied on, but the question whether the collision might not have been avoided by ordinary care on B.'s part was not discussed.

(*a*) *The Wheatshaf* (1866), 13 L. T. 612; *The Industrie* (1871), L. R. 3 A. & E. 308; *The Energy* (1871), L. R. 3 A. & E. 48; *The Sisters* (1876), 1 P. D. 117; *Luxford v. Large* (1833), 5 C. & P. 421; *The Niobe* (1888), 13 P. D. 55 (the action appears to have been *in rem*).

by the swell raised by her excessive speed was held liable (b). Where, in order to avoid a collision with A., made imminent by A.'s fault, a tug, B., was compelled to cast off her tow, C., and C. went ashore, it was held that C. could recover against A. (c). In order to avoid A. lying ashore in a fair-way without a light, B. was obliged to put herself ashore; it was held that B. could recover against A. (d). The value of an anchor and chain slipped to avoid collision, made imminent by the other ship's fault, has been recovered in an Admiralty action *in rem* (e) and at law (f).

In *The Seaton* (g) two steamships were proceeding on parallel courses, one on the quarter of the other and overtaking her. The sternmost ship altered her course, when three miles off the ship ahead, so as to make her course converge with that of the other and bring about risk of collision. After this she never altered her course, and struck the ship ahead. The leading ship appears either to have done nothing until she was struck, or to have taken a course which was clearly wrong. The overtaking ship was held solely in fault (h).

Alteration of course causing risk of collision.

Closely connected with the question, whether a specific act of negligence caused the loss, is the question whether a particular item of loss can be recovered as damages caused by the negligent act. The same principle applies in either case—that the wrongdoer is liable for all the reasonable consequences of his negligence. The cases connected with the question as to the *quantum* of damages will be considered in Chapter V. below.

What can be recovered as damages.

In common law actions juries have sometimes been permitted to take a so-called "equitable" view of the circumstances of the case; and, where there have been faults on both sides, to award a smaller sum for damages than they would

Whether negligence of the plaintiff is to be taken into account in estimating damages.

(b) *The Batavier* (1854), 9 Moo. P. C. 286; *Luxford v. Large*, *ubi supra*.

(c) *The Wheatsheaf*, *ubi supra*.

(d) *The Industrie*, *ubi supra*.

(e) *The Port Victoria*, (1902) P. 25; *Johannsen v. The Elvina*, 4 Fed. Rep. 573. So of a tow cut adrift (*semble*): *The Mount Hope*, 84 Fed. Rep. 910.

(f) *Majoribanks v. Boyd*, Times.

11th Dec. 1873 (*The Almora's* cable fouled *The Astell's* when getting under way in the Hooghly, and *The Astell* slipped).

(g) 9 P. D. 1.

(h) *Qu.* whether in this case the leading ship was not also in fault. It would seem that, with ordinary care, she could have avoided the consequences of the defendant's negligence. See *supra*, pp. 30 *seq.*

have awarded had there been no fault on the part of the plaintiff. These cases (*i*) cannot be treated as authorities for the proposition that negligence of the plaintiff which did not either wholly or in part cause the loss is material upon the question of damages. It is wholly immaterial, and the rule is so stated by Pollock, C. B., in *Greenland v. Chaplin* (*k*).

Wilful injury
to a ship.

Where, as has sometimes happened, one ship is wilfully and maliciously (*l*) driven against another, the wrongdoer would probably be held liable for the entire loss, notwithstanding negligence in the other ship in not avoiding the collision.

Burden of
proof of
negligence on
the plaintiff.

To enable the plaintiff in a collision action to recover damages, he must prove affirmatively that his loss was caused by the negligence of the defendant or of some person for whose acts he is liable. The general rule was thus stated by Lord Wensleydale (*m*): "The party seeking to recover compensation for damage must make out that the party against whom he complains was in the wrong. The burden of proof is clearly upon him, and he must show that the loss is to be attributed to the negligence of the opposite party. If at the end he leaves the case in even scales, and does not satisfy the Court that it was occasioned by the negligence or default of the other party, he cannot succeed." So in the case then before the Court, it being proved that the plaintiff ship had no light, the inference was that, but for the absence of the light, the collision probably would not have occurred, and the plaintiff failed to recover (*n*). The plaintiff must therefore make out at least a *prima facie* case. The burden of proof

(*i*) *Raisin v. Mitchell* (1841), 9 Car. & P. 613; *Smith v. Dobson* (1841), 3 Scott, N. R. 336; 3 Man. & G. 59. The latter report does not agree with the former as to the reasons given by the jury for their verdict. See some remarks of Sir J. Patteson on this case in *Netherlands Steamboat Co. v. Styles* (1854), 9 Moo. P. C. 286, 297.

(*k*) 5 Ex. 243.

(*l*) For an instance of such a case see (1866), L. R. 1 A. & E. 64; *The Ida* (1860), Lush. 6; *Slyfield v. Penfold*, 66 Fed. Rep. 571;

Gaffner v. Pigott, 116 Fed. Rep. 486.

(*m*) See *Morgan v. Sim, The London* (1857), 11 Moo. P. C. 307, 312. See *Harris v. Anderson* (1863), 14 C. B. N. S. 499, for a case where the plaintiff failed through absence of such proof; and cp. *Wakelin v. L. & S. W. Rail. Co.* (1886), 12 App. Cas. 41.

(*n*) In *The Fenham* (1870), L. R. 3 P. C. 212, a similar presumption arose. See the remarks of Lord Blackburn on this case, *Cayzer v. Carron Co.* (1884), 9 App. Cas. 873, 882.

lies so far on him (o), and this burden is still on the plaintiff, if the defendants admit that their vessel is also to blame for the collision (p). But it does not follow that it lies on him throughout the whole case. Having made out a *primâ facie* case of negligence on the part of the defendant, the burden of proof is shifted, and the defendant will be liable unless he proves that his negligence in no way contributed to the loss (q). In *The Olympic* and *H.M.S. Hawke* (r) the two vessels were steaming in the same direction through a buoyed channel of considerable width on courses crossing at a very acute angle. *The Hawke's* duty was to keep her course and speed, and it was proved that she suddenly swerved into *The Olympic*. The onus was then on *The Hawke* to prove the cause of the collision *primâ facie* was suction or some other cause independent of the management of *The Hawke*. This she did, and then there being no proof of negligence in the management of *The Hawke* after the commencement of the swerve, the onus of proving that the swerve was inevitable accident rested on *The Olympic*. This she could not do, for it being her duty to keep clear and having sufficient sea-room to have done so, she was in fault for being so near to *The Hawke* as to cause "suction," i.e. the interaction of two vessels moving through comparatively shallow water at great velocity and in close proximity. In the same case it was held in the Court of Appeal that though it was possible but not certain that the collision could have been averted, if the steam steering-gear of *The Hawke* had not jammed, this did not help *The Olympic*, for it was upon her to prove that if the gear had not jammed the collision would have been prevented, and this she could not do, the onus was upon her to prove negligence, not which might have, but must have contributed to the accident.

(o) *The Bolina* (1844), 3 Not. of Cas. 208, 210; *The Carron* (1853), 1 Sp. 91; *The London* (1857), 11 Moo. P. C. 307; *The Marpesia* (1872), L. R. 4 P. C. 212; *The Benmore* (1873), L. R. 4 A. & E. 132; *The Abraham* (1873), 28 L. T. 775; *The Albert Edward* (1875), 44 L. J. Ad. 49.

(p) *The Cadeby*, (1909) P. 257.

(q) *The Ligo* (1831), 2 Hag. Ad. 356, 360; *The Sisters* (1876), 1

P. D. 117; *The City of Antwerp* and *The Friedrich* (1868), L. R. 2 P. C. 25; *Cayzer v. Carron Co. (The Margaret)* (1883), 9 App. Cas. 873. See *Daniel v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 216; *ibid.* 591, as to what is sufficient evidence of negligence; *S. O. ibid.* 5 H. L. 45.

(r) (1913) P. 214, 235, 246, 247, 270.

Again, instances of a shifting of the burden of proof after a simple *primâ facie* case of negligence has been made are the cases of a ship ashore (*s*), a fishing boat fast to her nets (*t*), a ship in stays hove to (*u*), lying dead in the water (*x*), or otherwise not under command, and, without negligence on her own part, unable to keep out of the way. It has been pointed out in America by the Supreme Court that a ship in tow in collision with another tow is in a wholly different position, as regards the burden of proof of negligence in one or both tugs, from that of a ship at anchor suing another under way (*y*).

Primâ facie
negligence.

Collision with
ship at
anchor.

Negligence may be inferred from facts proved without proof of any specific act of negligence. "Where certain inferences of fact have been established by numerous cases, they become to a great extent very nearly of the same authority as if they were propositions of law" (*z*). This is notably the case in collision actions. In the common case of a collision in daylight between a ship under way and another at anchor in a proper place, the burden is upon the other ship to show that she was not in fault (*a*), for when a steamship runs down a vessel at her moorings in broad daylight, that fact is by itself *primâ facie* evidence of fault (*b*), but if the collision were at night the plaintiff would have to prove in the first instance that the lights on his ship were burning efficiently (*c*).

The general rule that a vessel under way is *primâ facie*

(*s*) *The F. & P. M.* (No. 1), 45 Fed. Rep. 703.

(*t*) *The Columbus* (1848), 1 Pritch. Ad. Dig. ed. 1887, 239; *The Two Sisters*, *ibid.* 248; *The Bottle Imp* (1873), 28 L. T. 286.

(*u*) *The Eleanor and The Alma* (1865), 2 Mar. Law Cas. O. S. 240. But see *The London* (1849), 6 Not. of Cas. 29; *The Rosalie* (1880), 5 P. D. 245, in both of which cases the ships hove to were held to be in fault.

(*x*) *The James T. Easton*, 27 Fed. Rep. 464. A tug lying in the track of a ferry-boat, that refused to move when whistled to do so, was, in America, held in fault: *The Roslyn*, 22 Fed. Rep. 687.

(*y*) *The L. P. Dayton*, 13 Dav. 337.

(*z*) *Per Mellish*, L. J. (1870),

L. R. 9 Ch. 713 (as to proof of damage in actions to restrain nuisances).

(*a*) *The Indus* (1886), 12 P. D. 46; *The Bothnia* (1860), Lush. 52; *The Otter* (1874), L. R. 4 A. & E. 203; *The Annot Lyle* (1886), 11 P. D. 114; *The Henri IV.*, 13 Quebec L. R. 379; *The Beaver*, 2 Bened. 118; *The Baltic*, 2 Bened. 452; *The D. S. Miller*, 76 Fed. Rep. 877; *The Meanachy*, (1897) A. C. 351. And see *infra*, pp. 45, 50.

(*b*) *Per Lord Watson, The City of Peking* (1888), 14 App. Cas. 40, 43. *Op. The Indus, supra*; *The Merchant Prince*, (1892) P. 179; *The Polyésien*, (1910) P. 28; *Stephen v. Allan Line S. Co.* (1911), S. C. 836.

(*c*) *The Telegraph* (1854), 1 Sp. 427.

in fault for a collision with a ship at anchor applies, although the latter is brought up in an improper place, or has no riding light, provided the former could with ordinary care have avoided her. "It is the bounden duty of a vessel under way, whether the vessel at anchor be properly or improperly anchored, to avoid, if it be possible with safety to herself, any collision whatever" (*d*). Even if a ship is brought up in the fairway of a river, if the other could with ordinary care have avoided her, the latter will be held solely to blame (*e*).

In *The Indus* (*f*) a steamship ran into a lightship, and it was suggested on behalf of the steamship that her steam steering-gear failed to act and that the collision was an inevitable accident. In the absence of any evidence that this was so, it was held that the *primâ facie* evidence of negligence against the steamship had not been displaced, and she was held alone in fault.

A ship that obstinately refuses to move from an anchorage where she necessarily endangers other craft will be held in fault for a collision that follows (*g*).

The rule that the mere fact of a daylight collision between a craft under way and another at anchor is *primâ facie* evidence of negligence in the latter, is not without exceptions. A derrick or wreck-raising craft moored in a strong and narrow tideway over or alongside a wreck, although not in an improper position or unlawfully obstructing the fairway, nevertheless presents such an obstruction to other vessels that it would not be reasonable to presume that the latter are negligent merely because they foul the former. The difficulties of the craft under way are still greater, if they are sailing vessels and the weather is boisterous, or if they are

(*d*) *Per* Dr. Lushington in *The Batavier* (1845), 2 W. Rob. 407; *Hay v. Le Neve* (1824), 2 Shaw's Scotch App. Cas. 395; *The Marcia Tribou*, 2 Sprague, 17. And see *infra*, Chapter X.

(*e*) *Mayor, &c. of Colchester v. Brooke* (1845), 7 Q. B. 339. But *dist. Dalton v. Denton* (1857), 1 C. B. N. S. 672. As to the right to bring up in a fairway, see *Anon. Case* (1807), 1 Camp. 516, note. *The Clara*, 12 Otto, 200, and *United States v. St. Louis, &c. Transpor-*

tation Co., 184 U. S. 247, show that if a ship brings up in a place where others cannot with ordinary care avoid her, she will be held alone in fault. As to obstruction of highways on land, see *Harris v. Mobbs* (1878), 3 Ex. D. 268; *Wilkins v. Day* (1884), 12 Q. B. D. 110.

(*f*) (1886), 12 P. D. 46.

(*g*) *The Cachapool* (1882), 7 P. D. 217; *The Highland Loch*, (1911) P. 261.

tugs with a heavy train of barges in tow, and the obstruction is come upon suddenly and unexpectedly (*h*). In such cases the ship at anchor may reasonably be required to do what she can to assist the other to clear her, either by sheering with her helm, paying out chain, or in any other way possible; and it might be held to be negligence on her part not to do so (*i*).

Where the anchored vessel is lying in a fairway or frequented waters, out of ordinary anchorage ground, and the collision is at night or in a fog, and the questions whether she was in a proper place and exhibited proper lights, or sounded proper fog signals, and maintained a watch, are raised by the pleadings, the burden would seem to be on her to prove that she was not in fault in any of these matters (*k*).

In New York harbour, a ship was lying at a wharf with her bowsprit projecting into a slip, contrary to the harbour rules, and a ferry boat entering the slip struck the bowsprit, it was held that both were in fault, the one for being moored in an improper position, the other for not keeping clear of her (*l*). And so where the moored ship at night had not stowed her boom, which was left outboard over the rail (*m*).

So where the loss is not immediate, and other possible causes intervene (as where the vessel is lying in driving ice), the burden of proof may be on the ship at anchor to show that the loss was caused by the collision (*n*).

The May Queen (*o*), a barquentine running into Newhaven in a S.E. gale, let go her anchor when about 150 yards off a ketch at anchor. There was a spring flood tide running and the gale was right into the harbour. The port cable parted, and before the starboard anchor, which was let go, brought her up, the barquentine fouled the ketch. It was held to be

(*h*) In American cases of this nature, the craft under way have been held to be free from fault; *The Chauncey M. Depew*, 59 Fed. Rep. 791. Cf. *The J. R. P. Moore*, 45 Fed. Rep. 267; *The Bridgeport*, 35 Fed. Rep. 159; *The Pas-saic*, 76 Fed. Rep. 460.

(*i*) See *Wells v. Armstrong*, 29 Fed. Rep. 216; and cases *infra*.

(*k*) This opinion has been expressed in American cases; *The Armonia*, 67 Fed. Rep. 363.

(*l*) *The Fort Lee*, 31 Fed. Rep. 570; *The Margaret J. Sanford*, 30 Fed. Rep. 714; 37 Fed. Rep. 148; dist. *Dalton v. Denton* (1857), 1 O. B. N. S. 672 (timber projecting from a wharf over the river bed).

(*m*) *The Industrie*, 27 Fed. Rep. 767.

(*n*) *The Maryland*, 14 Fed. Rep. 367.

(*o*) Ad. Div. 1 May, 1900.

an inevitable accident, due, either to a latent defect in the cable, or to stress of weather. No latent defect was visible in the broken link of the chain, which was produced in Court; and the chain was sufficient in point of size.

A ship is not one of those things dangerous in themselves, which entail upon their owners the responsibility of insuring safety (*p*). But the law casts upon the shipowner the duty of using reasonable care to insure that his ship, when she sails and while she is under way, is in a condition in which she may be navigated with safety to other ships. If she damages another ship in consequence of the giving way or inefficiency of her gear or equipment, a *prima facie* case of negligence arises. The presumption of negligence may, however, be rebutted by showing that the defect was latent, that reasonable care was in fact used to put and keep her in good condition, or that the giving way of the gear was due to stress of weather or other unavoidable cause (*q*).

Defective ship or equipment; shipowner not required to insure safety.

In these cases the principle of *Scott v. London and St. Katherine's Dock Co.* (*r*) applies. It was there held that "where the thing" (goods suspended over the pavement, which fell and injured the plaintiff) "is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care." In *Moffatt v. Bateman* (*s*), it was held that the principle of *Scott v. London and St. Katherine's Dock Co.* did not

(*p*) *Infra*, p. 82. As to unwieldy rafts of excessive size, see *The Niagara*, 44 Fed. Rep. 775; or tows of excessive length, *The Mount Hope*, and cases *infra*, p. 195.

(*q*) See p. 21, above. As to the obligation under a towage contract, see *The West Cock*, (1911) P. 25, C. A. 208; and see p. 205, *infra*.

(*r*) (1863), 3 H. & C. 596; *Byrne v. Boadle* (1864), 2 H. & C. 722; 33 L. J. Ex. 13. Of the case in the text Willes, J., said (L. R. 2 C. P. 11): "There the defendants had in their possession, and under their control, something which was dangerous unless reasonable precautions were taken to prevent injury to third persons."

It would seem that these remarks apply to the owners of ships. Cf. *per* Lord Halsbury, C., *Smith v. Baker*, (1891) App. Cas. 325, 335.

(*s*) (1869), L. R. 3 P. C. 115: *Manzoni v. Douglas* (1881), 6 Q. B. D. 145, is a very similar case. The question as to what is *prima facie* proof of negligence was much discussed in that case, and also in *Kearney v. London, Brighton and South Coast Rail. Co.* (1880), L. R. 5 Q. B. 411; *ibid.* (1881), 6 Q. B. 759; 39 L. J. Q. B. 200; *ibid.* 40 L. J. Q. B. 285; *Daniel v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 216; *ibid.* 591; *ibid.* (1870), 5 H. L. 45.

enable a person, who was injured by being thrown out of a vehicle, to recover damages without affirmative proof of negligence on the part of the defendant. "There is nothing more usual than for accidents to happen in driving without any want of care or skill on the part of the driver"; and therefore no *primâ facie* presumption of negligence having been raised (this was the opinion of the Privy Council), it was held that affirmative evidence of negligence was necessary. In this case the kingbolt of the carriage, being defective, had broken, whereupon the horses bolted, and the plaintiff was thrown out. It was proved that the carriage was examined by a blacksmith every three months; and that the defendant, the owner, had not himself examined it before starting on the day of the accident. It was held that there was no negligence on the part of the owner in this respect.

Proof of
absence of
contributory
negligence in
the plaintiff.

In common law actions for negligence, there has of late been much discussion whether it is necessary for a plaintiff to give evidence of absence of contributory negligence (*t*). And in an ordinary "day" collision between a ship under way and a ship at anchor, it would seem that the fact of the collision raises a presumption of negligence in the ship under way, which, unless rebutted by proof of negligence in the ship at anchor, must result in a judgment for full damages. The matter is not, however, free from doubt, for even in such a case it has been said in American cases that evidence of absence of negligence in the plaintiff is necessary to enable him to recover (*u*). When the point arises for final decision it will probably be found that the opinion of Kay, L. J., in *Smith v. South Eastern Rail. Co.* (*x*) is correct, and that, in order to raise a presumption of negligence in the defendant, it is not necessary for the plaintiff, in the first

(*t*) See *Smith v. South Eastern Rail. Co.*, (1896) 1 Q. B. 178; *Wakelin v. London and South Western Rail. Co.*, *ibid.* 189, note; *Dublin, Wicklow and Wexford Rail. Co. v. Slaterry* (1878), 3 App. Cas. 1155.

(*u*) In *The Clara*, 12 Otto, 200, it was said that "the plaintiff, in order to recover entire damages, must prove both care on his part and want of it on the part of the defendant"; and *Parsons on Ship. I.* 529, is to the same effect. Cf.

The Michigan, 52 Fed. Rep. 501; *The Rockaway*, 19 Fed. Rep. 449 (a fog case); *The Florence P. Hall*, 14 Fed. Rep. 408, "the burden is on the libellant to prove his light was burning and could be seen"; *Middlesex Quarry Co. v. The Albert Mason*, 2 Fed. Rep. 821. *The R. R. Kirkland*, 48 Fed. Rep. 760, seems opposed to this.

(*x*) (1896) 1 Q. B. 178, 189. See also *Clyde Navigation Co. v. Barclay* (1876), 1 App. Cas. 790.

instance, to prove absence of negligence on his own part. In Admiralty actions, owing to the procedure by way of preliminary act, and the form of pleadings in common use, the question seldom arises.

Where two ships are approaching each other so as to involve risk of collision, the law (*y*) usually requires one of them to keep out of the way and the other to keep her course. If a collision occurs between two such ships, there is, it is submitted, no presumption that the ship required to keep out of the way is in fault (*z*); for the duty of the other ship to keep her course is no less stringent than that of the former ship, and until she proves that she did keep her course the fact of the collision is no evidence of negligence in the ship required to keep out of the way. But upon such proof being given, a presumption of fault in the ship required to keep out of the way arises, and unless she proves circumstances rebutting this presumption she will be held in fault without proof of any specific act of negligence on her part (*a*).

Where one ship is by law required to keep out of the way.

Though in clear weather and under ordinary circumstances the presumption is that a steamship is able to keep out of the way of a sailing ship, it may happen that by no fault of her own she is not able to do so. In such a case no presumption of negligence on the part of the steamship will arise. In a fog, for example, a sailing ship has no right to rely upon an approaching steamship, which she cannot see, being able to keep out of her way. It is the duty of the sailing ship,

(*y*) See Arts. 17 *seq.*, *infra*, p. 367.

(*z*) See *per* Westbury, C., *The City of Antwerp* (1868), L. R. 2 P. C. 25; *infra*, p. 387; *The Florence P. Hall*, 14 Fed. Rep. 408.

(*a*) See the following American cases: *The Carroll*, 8 Wall. 302, 304; *The Scotia*, 14 Wall. 170, 181; *New York, &c. Mail Co. v. Rumball*, 21 How. 372, 385. In some cases, however, the burden has been thrown in the first instance upon the steamship to prove that the sailing ship altered her course: *The Seneca*, 47 Fed. Rep. 87; *The J. D. Peters*, 42 Fed. Rep. 269; *The Gypsum Prince*, 67 Fed. Rep. 612; *per*

Brown, J., *The City of Truro*, 35 Fed. Rep. 317: "Where, upon the whole case, there is no decisive evidence of fault on the part of the sailing vessel, the steamer must answer for the collision, where no circumstances appear to show that the accident was inevitable." Cf. *The Pennland*, 23 Fed. Rep. 551; *The Badger State*, 8 Fed. Rep. 526; *Farr v. The Farnley*, 1 Fed. Rep. 631. The case is the same as between a free and a close-hauled sailing ship: *The Erastus Wiman*, 20 Fed. Rep. 245. Some of the foreign codes adopt highly artificial presumptions as to which ship is in fault.

under such circumstances, to be in readiness to act herself; and, if she simply stands on her course and does nothing until the collision occurs, she may be held in fault (b).

Where a sailing ship was lost with all hands in a collision with a steamship, the latter was held in fault upon the facts stated in her own pleadings, and upon evidence from a third ship that her lights were burning some time before the collision (c).

Whether not hearing a foghorn or whistle raises a presumption of negligence.

The question sometimes arises whether credible evidence from witnesses on board a ship, A., that they were listening but heard no fog-horn or whistle from ship B., though it was alleged by those on B. that a fog-horn or whistle was being sounded on their ship, which was in fact in the neighbourhood of A. for some minutes, and subsequently came into collision with her, amounts to proof that no horn or whistle was sounded. Such evidence frequently has to be weighed against equally credible evidence from B., that the horn or whistle was properly sounded on board B. The atmospheric conditions under which sounds are readily transmitted are peculiar; the attention of scientific men has been directed to the subject only in recent years, and the subject is at present imperfectly understood (d). The Courts are therefore unwilling to infer negligence from the fact that a fog-signal, which is proved to have been sounded in the vicinity, was not heard. The evidence of A. will not necessarily prove that

(b) See *The Zadok* (1884), 9 P. D. 114, 118.

(c) *The Aleppo* (1866), 35 L. J. Ad. 9.

(d) Professor Tyndall arrived at the following conclusions, based upon elaborate experiments at sea and on shore in the neighbourhood of the fog-syren at the South Foreland:—(1) that the condition most unfavourable for the transmission of sound is “water in a vaporous form mingled with the air, so as to render it turbid and flocculent. This acoustic turbidity often occurs in days of surprising optical transparency.” (2) “The air associated with fog is as a general rule highly homogeneous and favourable to the transmission of sound.” (3) Rain, hail, snow, fog, have no sensible power to obstruct sound. (4) The sound range (of the syren) on a

calm day varies from two-and-a-half to sixteen-and-a-half miles. Sir J. Douglas, in his evidence before the committee on electrical communication between lightships and the shore, 1887, states that the most powerful syren under certain conditions is not reliable beyond one mile; and that hot sun is bad for sound. He also states—a fact often doubted in Court—that he can tell within two degrees the direction from which a fog signal at sea comes. In the *Channel Pilot*, 9th ed. Art. 18, cited by Bucknill, J., in *The Koning Willem I.*, (1903) P. 114, 121, it is stated that “apart from the wind, large areas of silence have been found in different directions, and at different distances from the origin of the sound, even in clear weather.”

proper signals were not made by B.; "the fact that the sound of the fog-horn does not appear to have reached the ears of those on board *The Campania* is not sufficient to override the positive evidence from the witnesses from the barque that it was being properly sounded," and the evidence from B. will not prove that those on board A. were negligent in not hearing them (e). "The vagaries of sound in a fog," it has been said by nautical men of experience, "are of a most astonishing character." It has been noticed also that one ship's horn or whistle may drown that of the other ship, where the blasts are simultaneous. But where it was proved that a large steamer had been regularly sounding signals, it was held to be so improbable that they would be inaudible upon another vessel, that the fact that they were not heard was enough to justify a finding that a bad look-out was being kept (f).

It is not enough to prove that the other ship omitted to do something that would have prevented the collision, or that she did something without which the collision would not have occurred. It must be proved that the omission or act complained of was negligent (g). If the plaintiff ship has herself infringed the regulations, or has been guilty of negligence which contributed to the collision, the burden would seem to be on her to show that the collision was not caused entirely by her own fault.

Act charged
must be
negligent.

In all cases where it is sought to justify a departure from the regulations, the burden of proof is on the party deviating from the general rule (h). Similarly when the regulations direct a departure, in certain circumstances, as in the note to Art. 21, the burden of proof that the circumstances were present is on the vessel claiming the benefit of the exception (i). Whenever a breach of a regulation is proved, and it appears *prima facie* to have contributed to the collision,

Burden of
proof when
regulations
not observed.

(e) *The Campania*, (1901) P. 289; *The Zadok* (1884), 9 P. D. 114, 118; *The Merthyr* (1898), 8 Asp. M. C. 475; *The Nador*, (1909) P. 300. The Courts in America have come to a similar conclusion; *The Martello*, 46 Davis, 64; *The Senator D. C. Chase*, 46 Fed. Rep. 874; *The Emperor*, *ibid.* 143; *The Lepanto*, 21 Fed. Rep. 651.

(f) *The Curran*, (1910) P. 184, M.

187, C. A.

(g) *The Sisters* (1876), 1 P. D. 281.

(h) *The Concordia* (1866), L. R. 1 A. & E. 93, 98; *The Immaganda Sara Clasina* (1850), 7 Not. of Cas. 582, 585.

(i) *The Agra and Elizabeth Jenkins* (1867), L. R. 1 P. C. 501, 504.

the burden is on the party who broke the rule to prove that the breach was not the cause or part of the cause of the collision. This would seem to be the rule laid down by Lord Romilly in *The Fenham* (k). In that case a steamship fouled a ship which was not carrying lights as required by the regulations then in force. In the absence of proof to the contrary the Privy Council held that the absence of lights caused the collision. In delivering judgment Lord Romilly said: "The burden lies on her to show that the non-compliance with the regulations was not the cause of the collision."

Burden of proving facts peculiarly in the knowledge of the person charged.

When one ship alleges want of lights or of a proper look-out, or insufficient moorings, or any such negligence on board the other as it is impossible or difficult for her to prove by direct evidence, the burden is on the latter, as it is peculiarly in her power to prove that her lights were sufficient, or that there was no such negligence (l). "The burden of proof should under all circumstances be thrown on those who have a peculiar knowledge of the subject and peculiar means of proving it which do not belong to the other party" (m).

Specific acts of negligence.

Many of the innumerable acts and omissions which cause collision have been the subject of decision in the Courts with reference to the question of negligence. Infringement of the collision regulations, carelessness, want of look-out, and disregard of the ordinary rules of seamanship, are amongst the most frequent causes of collision. Cases illustrating specific acts of negligence, both infringement of the regulations for preventing collisions at sea, and neglect of the ordinary practice of seamen, are considered in Chapter XIV.; the cases as to "the ordinary practice of seamen" being collected under Art. 29, which expressly refers to the necessity of observing that practice.

Evidence in collision cases.

In collision cases the Court will not impute perjury to the witnesses, if any other conclusion is reasonably possible (n).

(k) (1870), L. R. 3 P. C. 212. See also *infra*, p. 57. In *The Rhodiv* (1880), 5 App. Cas. at p. 893, Lord Blackburn characterised the rule laid down in *The Fenham* as "an artificial rule, as to the inference to be drawn from evidence," but it is submitted that it is none the less good law.

(l) *The Swanland* (1855), 2 Sp. 107; *The John Harley* and *The William Tell* (1866), 13 L. T. 413; *The Concho*, 24 Fed. Rep. 758.

(m) *The Swanland* (1855), 2 Sp. 107, 109.

(n) Cf. judgment of Evans, P., *Olympic* and *H.M.S. Hawke*, (1913) P. 214.

Certain facts, such as wind, tide, time and place of collision, courses, bearings and speed of vessels are usually admitted in the preliminary acts, or otherwise clearly proved, then to the established facts the doubtful facts are fitted as well as possible, and the points in dispute decided to a large extent by ascertaining how nearly they are consistent with the admitted or established facts (o). The estimates even of experienced and trustworthy witnesses as to such things as speed or angle of blow are frequently inaccurate (p), and more accurate deductions can be drawn from entries recorded in logs (q). On nautical questions the Court usually has the assistance and advice of nautical assessors, but it is for the Court to decide questions of fact (r).

(o) *The Olympic* and *H.M.S. Hawke*, *ubi sup.*

(p) *The Sargasso*, (1912) P. 192, 195.

(q) *The Olympic* and *H.M.S. Hawke*, *ubi sup.*

(r) *The Gannet*, (1900) App. Cas. 238.

CHAPTER II.

STATUTORY OBLIGATION TO OBSERVE REGULATIONS.

By the Merchant Shipping Act, 1894, s. 419 (1) (a), it is enacted that all owners and masters of ships shall obey the Collision Regulations, and shall not carry or exhibit any other lights or use any other fog signals than such required by those regulations, and a similar obligation has been in force since 1863.

The regulations at present in force are those of 1910, which were made by Order in Council of the 13th October, 1910 (b), under the powers conferred by the Merchant Shipping Act, 1894, s. 418 (1). These regulations were substituted for those of 1897, and have effect as if enacted in the Act.

Importance
of earlier
regulations.

There have been regulations for preventing collisions at sea since the year 1840, some being statutory enactments, some regulations issued under powers given by Acts of Parliament, and some having no statutory authority. The nature of the obligation to obey the regulations current at different times has thus varied, and in addition the rights and liabilities of owners consequent on disobedience have been the subject of several legislative enactments. The Maritime Conventions Act, 1911 (c), has abolished the last of these, the statutory presumption of fault arising on a breach of a regulation, which was in force from 1873 to 1911, and the present law as to owners' liability for breaches of the Collision Regulations would seem to be the same as it was for breaches of statutory regulations before 1863, when a special liability for a breach was first imposed (d). But as

(a) 57 & 58 Vict. c. 60.

(b) Stat. R. & O. 1910, p. 457.
Printed in full, *infra*, p. 491 *seq.*

(c) 1 & 2 Geo. 5, c. 57.

(d) This statement is made on

the assumption that the obligation to obey regulations enacted in statutes is **not** increased by a section specifically enjoining obedience. Such a section was first en-

pointed out above all previous regulations were not of statutory force, and it is therefore necessary, when referring to old cases to ascertain or illustrate the present law, to know what was the origin and legal force of the various sets of regulations operative at the time, when the cases referred to were decided. After 1863 all the collision regulations had equal statutory force, and decisions since that date are of value so far as they are not affected by the special consequences of disobedience imposed by statute. To provide the information required in an easily accessible form, the various enactments in force at different times are summarised below, and a classification made into different periods, within which the law as to the obligation to obey regulations, and as to the rights and liabilities of owners consequent on a breach remained substantially the same.

PERIOD I.—UP TO 1846.

Many years before the rule of the road at sea was regulated by Act of Parliament, the practice of seamen had established rules to enable approaching ships to keep clear of each other. These rules, which are the foundation of those now in force, were well established by custom, and formed part of the general maritime law administered by the Admiralty Court (*e*). In the year 1840 the London Trinity House pro-

Regulations
up to 1846.

acted in 1863, was re-enacted in 1894, and is in force to-day.

(*e*) A rule of the road for ships on opposite tacks existed in the latter part of the eighteenth century. Admiralty Regulations of that date direct that a ship on the larboard tack shall bear up for another on the starboard tack. In *The Resolution* (Marsd. Ad. Cas. 332), of the year 1789, the rule is said to have been framed by Lord Howe seven or eight years previously. In the Earl of Warwick's Sailing Instructions of 1645 there is an Article directing that no captain shall take the wind of an admiral. (Ad. Ct. Rec. Miscell. bundle 56.) And the Duke of York's Sailing Instructions of about 1670 contain an Article to the like effect. In neither of these codes, nor in any of the pleadings or

sentences of the seventeenth and eighteenth centuries, is there any trace of the "port tack" rule.

The rule that a ship with the wind free must give way to a ship close-hauled appears to have been first recognized by the Courts in Lord Erskine's time, "in a case tried at Guildhall before Mr. Justice Buller."

In 1828, the rule is thus stated: "The ship which has the wind at large may go either to leeward or to windward; but, as a general rule, she ought to expect that the ship which is close-hauled will keep to windward, and therefore she ought to go to leeward, unless it is quite clear that she can go to windward with safety." See *Handyside v. Wilson* (1828), 3 C. & P. 528. In *Jamieson v. Drinkald* (1826), 5 L. J. C. P. O. S. 30, expert evi-

mulgated regulations based on the existing practice (*f*). These rules had no statutory authority, nor were they rules of law, but were authoritative evidence of what seamen ought to do in circumstances in which the rules were applicable (*g*), but the primary rule was to avoid a collision, if it could be done with safety (*h*). During this period the result of disregarding the regulations on the rights and liabilities of shipowners depended on principles of law unmodified by legislative enactment.

PERIOD II.—1846 to 1851.

Regulations,
1846 to 1851.

In 1846 the Trinity House rules for steamships, "port to port" and "starboard side of narrow channels," were in substance enacted as statutory obligations by sect. 9 of the Steam Navigation Act, 1846 (9 & 10 Vict. c. 100), and a penalty imposed on masters who disobeyed them. Under this statute the Admiralty Regulations of 1848 (*i*) as to lights were promulgated. Observance of these regulations was enforced by a penalty on masters and by a provision (*k*) that the owner of a vessel in the sea within twenty miles of Great Britain should not be entitled to recover any damages, which might be sustained by such vessel in consequence of any other vessel running foul of her at night. In other respects during this period the rights and liabilities of shipowners remained unaltered; if negligence caused a collision, liability and a corresponding right to recover arose.

PERIOD III.—1851 to 1863.

Regulations,
1851 to 1863.

By the Steam Navigation Act, 1851 (*l*), the statutory rules for steamships enacted in the Act of 1846 were

dence as to the custom was heard, and the judge had "the assistance of two Brethren of the Trinity House, to explain the duties of the masters of both ships."

(*f*) London Gazette, 3rd Nov. 1840; 1 W. Rob. 488.

(*g*) *Duke of Sussex* (1841), 1 W. Rob. 274; *The Unity* (1856), Swab. 101; *The Hope* (1840), 1 W. Rob. 154; *The Immaganda Sara Clasina* (1850), 7 Not. of Cas. 582; 8 Moo. P. Q. 85.

(*h*) *The Test* (1847), 5 Not. of Cas. 276.

(*i*) Under powers given in sect. 10; London Gazette, 11th July, 1848; 29th May, 1849. These rules ordered masthead and red and green port and starboard lights for steamships, and are substantially the same as those now in force.

(*k*) 9 & 10 Vict. c. 100, s. 12.

(*l*) 14 & 15 Vict. c. 79.

repealed, but, in substance, re-enacted in different terms, and continued in force until repealed by the Merchant Shipping Repeal Act, 1854 (*m*), and replaced by the rules enacted in the Merchant Shipping Act, 1854 (*n*), under which the port to port rule was applied to all ships, steam and sailing, and the starboard side of narrow channels rule to steamships only. In each of these Acts powers to make regulations were conferred, and under them Admiralty Regulations respecting lights for both steamships and sailing vessels under way were issued in 1852 (*o*) and 1858 (*p*), and in the latter year regulations respecting fog signals, lights for pilot vessels and vessels at anchor were added. As in the last period there appears to have been no direct statutory injunction to obey the regulations. During this period the liabilities of owners for breaches of regulations remained as before, but their rights were curtailed by enactments both in the Steam Navigation Act, 1851, and the Merchant Shipping Act, 1854, to the effect that if a collision was occasioned by the non-observance of any of the rules as to lights or navigation contained in or made under those Acts, the owner of the ship by which the rule was infringed should recover no damages for injury to his ship, unless it was proved that the departure from the rule was necessary (*q*). The effect

(*m*) 17 & 18 Vict. c. 12, s. 3, schedule.

(*n*) 17 & 18 Vict. c. 104, ss. 3, 4, 296, 297.

(*o*) See London Gazette, 4th May, 1852; Sw. Appendix, p. i.

(*p*) See London Gazette, 24th Feb. 1858; Sw. Appendix, p. vi.

(*q*) The sections ran as follows: The Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 28: "If in any case of collision between two or more vessels it appear that such collision was occasioned by the non-observance of either of the foregoing rules with respect to the passing of steamers, or" (the rules as to ships' lights made under the powers of the Act) . . . "the owner of the vessel by which any such rule has been infringed, shall not be entitled to recover any recompense whatever for any damage sustained by such vessel in such collision, unless it appears to the Court before which the case is tried that the

circumstances of the case were such as to justify a departure from the rule," &c. The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 298, was as follows: "If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any rule, &c. . . . the owner of the ship by which such rule has been infringed shall not be entitled to recover any recompense whatever for any damage sustained by such ship in such collision, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary." Under the latter Act, *The Juliana*, Sw. 20, was decided. The effect of these enactments, so far as they abrogated the Admiralty rule of division of loss, was probably not apprehended by the legislature. *The Swanland*, 2 Sp. 110.

of these enactments was to abrogate the Admiralty rule, that a wrong-doing vessel should recover half her loss if the other ship was also in fault, in the case of a vessel which had unnecessarily infringed the statutory rules. In each case the question had to be tried whether the infringement was negligence contributing to the collision, and if it was so held, the infringing vessel was liable to the other, but could herself recover none of her damage where the other vessel was also to blame. In *Tuff v. Warman* (*r*) and other cases (*s*) it was held, upon the construction of these enactments, that though the plaintiff had infringed the regulations, and by his negligence had brought the ships into danger, yet if the defendant could by reasonable care have avoided the collision, the plaintiff could recover, as under such circumstances the collision was not occasioned by the non-observance of the rule. Where one ship, A., was in fault for not keeping a look-out, and the other, B., was in fault for infringing the statutory rule, it was held that A. could recover half her loss, and that B. could recover nothing (*t*). But it was held that sect. 298 did not prevent the owner of cargo on board a ship infringing the statutory rule from recovering half his loss (*u*).

PERIOD IV.—1863 to 1873.

Regulations,
1862 to 1873.

By the Merchant Shipping Amendment Act, 1862 (*x*), the whole of the existing regulations, including such of the Trinity House Regulations as had not already been superseded, were expressly or impliedly repealed, and one complete code, as amended by the Order in Council (*y*) of the 9th January, 1863 (*z*), was substituted from the 1st June, 1863. By sect. 27 obedience to all the regulations was enjoined. This enactment placed all the regulations on the

(*r*) (1857), 2 C. B. N. S. 740; on app. 5 C. B. N. S. 573.

(*s*) *Morrison v. General Steam Navigation Co.* (1853), 8 Ex. 733; *The Vivid* (1855), 10 Moo. P. C. 472; *The Alival* (1854), 18 Jur. 296; *The Telegraph*, *ibid.* 427. See also *The Juliana* (1857), Sw. 20; *The Fairy* (1855), 1 Sp. 298; *The Wansfell* (1855), 1 Sp. 271.

(*t*) *The Aurora* (1860), Lush. 327.

(*u*) *The Milan* (1860), Lush. 388.

(*x*) 25 & 26 Vict. c. 63, s. 25, and Schedules A. and C.

(*y*) *London Gazette*, 13th Jan., 1863; Lush. Appendix, pp. i. and lxxii.

(*z*) Made under sect. 25.

same footing, and made it a distinct breach of duty to disobey any one of them. This, it is submitted, made a material difference in the legal effect of disobedience to the regulations of 1863 from that which had followed from disobedience to earlier regulations, certainly in the case of the Trinity House Regulations, probably in the case of the Admiralty Regulations as to lights, &c., and possibly even of the rules enacted in previous statutes.

Sect. 298 of the Merchant Shipping Act, 1854 (*a*), was repealed, and thereby the Admiralty rule as to the division of damages where both ships were to blame was restored in the case of a vessel guilty of an infringement of the regulations. In lieu of the penalty imposed by that section it was enacted by sect. 29 (*b*) that when a vessel by infringing the regulations occasioned a collision she should be deemed to be in fault, unless the circumstances of the case made a departure from the rule necessary. The rights of owners were thereby restored to what they had been before 1851, but their liabilities were for the first time increased by legislation. How far these liabilities were increased is somewhat uncertain, for the question as to whether the infringement was negligence contributing to the collision had still to be tried, and until that question was decided adversely to the infringer no presumption of fault arose (*c*). In *The Fenham* (*d*) a steamer sighted a sailing vessel on a misty evening after sunset, the sailing vessel carried no lights, and the steamer was in fault for various reasons for the collision which ensued. In the Court below the sailing ship had been held not to blame, because with ordinary care the steamer might have

(*a*) 17 & 18 Vict. c. 104.

(*b*) This section was in the following terms:—"If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any regulation made by or in pursuance of this Act, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary." The wording of

this section seems to have been suggested by a passage in the judgment of Cockburn, C. J., in *Tuff v. Warman*, *ubi supra*. Under this Act the following cases were decided: *The Fenham* (1870), L. R. 3 P. C. 212; *The Bougainville* (1873), L. R. 5 P. C. 316; *The Palestine* (1865), 13 W. R. 111; *The Pennsylvania* (1870), 23 L. T. 55.

(*c*) See *per* Lord Blackburn, *The Khedive* (1880), 5 App. Cas. 876, 892.

(*d*) (1870), 6 Moo. P. C. N. S. 501; L. R. 3 P. C. 212.

avoided the collision. In the Privy Council this decision was reversed on the ground that when it was proved that a vessel had not shown proper lights, the onus lay on her to show that the non-compliance with the regulations was not the cause of the collision, and this the sailing vessel had failed to do. Whether this decision proceeded on the ground that sect. 27 of the Act of 1862 having made the exhibition of lights a statutory duty, proof of breach of that duty cast on the vessel, by which the regulation had been infringed, the onus of proving that the absence of lights had not contributed to the collision, or on the ground that the presumption of fault enacted by sect. 29 caused the onus to shift, is not apparent from the reports. It is submitted (*e*) that the former is the ground of the decision, because the presumption of fault under sect. 29 only arose after it had been proved that the collision had been occasioned by the infringement. If this is so, the decision is of authority at the present time, for sect. 27 has been re-enacted as sect. 419 (1) of the Merchant Shipping Act, 1894 (*f*).

It would seem that the application of the doctrine in *Tuff v. Warman* (*g*) prevented sect. 29 from having the effect which those who framed it wished, and that for this and other reasons sect. 17 of the Merchant Shipping Act, 1873 (*h*), was passed.

PERIOD V.—1873 TO 1911.

During this period the obligation to observe all the regulations imposed by sect. 27 of the Merchant Shipping Amendment Act, 1862 (*i*), and re-enacted in sect. 419 (1) of the Merchant Shipping Act, 1894 (*k*), remained the same as in the last period, and the rights of owners were not directly affected by legislation, but sect. 17 of the Merchant Shipping Act, 1873 (*l*), which was in effect re-enacted by sect. 419 (1)

(*e*) With some hesitation in view of what Lord Blackburn said in *The Khedive* (1880), 5 App. Cas. at pp. 892, 893. See also pp. 70, 71, *infra*.

(*f*) 57 & 58 Vict. c. 60.

(*g*) (1857), 2 O. B. N. S. 740;

affirmed 5 C. B. N. S. 573.

(*h*) *Per* Lord Blackburn, *The Khedive* (1880), 5 App. Cas. p. 893.

(*i*) 25 & 26 Vict. c. 63.

(*k*) 57 & 58 Vict. c. 60.

(*l*) 36 & 37 Vict. c. 85.

of the Merchant Shipping Act, 1894, materially altered their liabilities. Sect. 419 (4) was in the following terms:—

57 & 58 Vict.
c. 60, s. 419
(4).

“Where, in a case of collision, it is proved to the Court before which the case is tried that any of the collision regulations have been infringed, the ship by which the regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary.”

The change in the language of this enactment was made with the following objects:—First, to take away the *ratio decidendi* in *Tuff v. Warman*; secondly, to render it unnecessary to have resort to an artificial rule as to the inference to be drawn from evidence (*m*); thirdly, to enable the Courts to adjudicate upon collision cases without the necessity of determining upon conflicting evidence the question of fact, (often a nice one,) whether or no an infringement of a regulation, applicable to the case, and that might by possibility have contributed to the collision, did, in fact, contribute to the collision (*n*); and, lastly, to increase the stringency of the regulations (*o*). The statute imposed on a vessel that has infringed a regulation which is *primâ facie* applicable to the case, the burden of showing affirmatively that such infringement could not, by possibility, have contributed to the collision (*p*). The Court had to inquire into the facts, in order

(*m*) As in *The Fenham* (1870), L. R. 3 P. C. 212. These two reasons for the alteration in the law are given by Lord Blackburn in *The Khedive*, 5 App. Cas. 893.

(*n*) *The Fanny M. Carvill* (1875), 13 App. Cas. 455, note; 2 Asp. M. C. 565; in Court below, *ibid.* 478; L. R. 4 A. & E. 417, 422; cited by Lord Blackburn in *The Khedive* (1880), 5 App. Cas. 876, 893; approved and followed by the Privy Council in *The Lapwing* (1881), 7 App. Cas. 512; *The Hibernia* (1874), 2 Asp. M. C. 454; *The Rondane* (1900), 9 Asp. M. C. 106 (a steamship held in fault for not stopping and reversing, though whether the collision would have been avoided by her doing so was conjectural).

(*o*) Per Lord Watson, *The Khedive* (1880), 5 App. Cas. 876, 901.

(*p*) *The Anselm*, (1907) P. 151;

10 Asp. 438; *The Duke of Buchleuch* (1890), 15 P. D. 86; on appeal, (1891) App. Cas. 310; *The Bellanoch*, (1907) App. Cas. 269; *The Corinthian*, (1909) P. 260. In Canada the course of legislation upon this subject has followed that of England. 31 Vict. c. 58, s. 6 (Canada), was to the same effect as 17 & 18 Vict. c. 104, s. 298, and in *The Eliza Keith* and *The Langshaw*, 3 Quebec, L. R. 143, it was held that a ship that had infringed the Canadian statutory rules could recover nothing; though the other ship was also in fault; but that the cargo-owner could recover half his loss; cf. *The Milan* (1860), Lush. 388. See also the following Canadian cases:—*The Aurora*, 2 Stuart's V. Ad. Rep. 52; *The Arabian*, *ibid.* 73; *The Germany*, *ibid.* 158; *The Quebec* and *The Charles Chaloner*, 19 Low. Canada

STATUTORY OBLIGATION TO OBSERVE REGULATIONS.

to ascertain whether the infringement could possibly have contributed to the collision, for it was not sufficient to find that it did not contribute.

Where a regulation which is material to the case was proved to have been infringed, as, for example, where one of the lights of the ship sued, which was open to the other ship, was proved to have been insufficient to satisfy the statute (*q*), the onus was on the ship carrying the improper light to show, if she could, that the departure from the regulations was necessary (*r*) or could not by possibility have contributed to the collision. Thus, in *The Englishman* (*s*), a trawler had a light at the masthead, but no side lights, as she ought to have had. No one on board the other ship saw her before the collision. The latter was held alone in fault upon the ground that there was no look-out, and that therefore the absence of the side lights on the trawler could not have contributed to the collision. In the absence of such proof she was held to be within the penalty of sect. 17 (*t*). If she alleged the other ship to be also in fault, it lay on her to prove, if she could, that it was not her fault alone that caused the collision (*u*).

A vessel sailing from Dieppe some days before the Regulations of 1880 came into force was held in fault for a collision, because she was not sounding and was not provided with a mechanical fog-horn. There was no proof that a mechanical horn could not have been procured at the port from which she sailed (*x*). But where a foreign ship came into the Mersey without having on board a second riding light, as required by the Mersey Rules, and a collision

Jurist, 201. The subsequent Canadian statute, 43 Vict. c. 29 (following the English Act, 25 & 26 Vict. c. 63), restores the Admiralty rule as to division of loss where the statutory rules are infringed.

(*q*) *The Duke of Buccleuch* (1890), 15 P. D. 86; *supra*, n. (*p*).

(*r*) *The Memnon* (1889), 62 L. T. 84; see *per* Lord Herschell, at p. 85.

(*s*) 3 P. D. 18. In *The Viola*, 59 Fed. Rep. 632, a similar American case, both ships were held in fault. See also *The Chusan* (1885), 5 Asp. M. C. 476, and *The Argo* (1900), 9 Asp. M. C. 74.

(*t*) See *The Hibernia* (1874), 2 Asp. M. C. 454; *The Arklow*, *Emery v. Cichero* (1883), 9 App. Cas. 136; *The Vera Cruz* (1884), 9 P. D. 88. *The Fenham* (1870), L. R. 3 P. C. 212, is a similar case under 25 & 26 Vict. c. 63, s. 29.

(*u*) *The Arklow* (1883), 9 App. Cas. 136.

(*x*) *The Love Bird* (1881), 6 P. D. 80. Cf. *The Martello*, 46 Dav. 64; *The Energy*, 42 Fed. Rep. 301; *The Catalonia*, 43 Fed. Rep. 396; *The Louisburg*, 75 Fed. Rep. 424.

occurred before the master, who had gone ashore to get one, had returned to the ship, it was held that the circumstances made a departure from the regulations necessary within the meaning of sect. 17 of the Merchant Shipping Act, 1873 (y).

The words of sect. 419 (4), "any of the regulations," were not construed literally; it was not an infringement of any regulation that brought the section into operation, but only an infringement of a regulation "which was in the circumstances applicable" (z). In *The Fanny M. Carvill* it was held that *The Peru* was not in fault because her screens were seven inches short of the statutory length (three feet), it being clear that her lights were not in fact seen across her bow.

The regulation which is infringed must be one material to the case.

A regulation was not infringed, within the meaning of the statute, if those in charge of the vessel did not in fact know, and could not, with ordinary care, have known, that the regulation had come into operation. If by a wrong manœuvre one vessel suddenly causes risk of collision to another, the latter will not be held in fault unless there is time for those in charge of her, being seamen of ordinary care, skill, and nerve, to appreciate the situation, and unless also there is opportunity for them to comply with the regulation. "When a sudden change of circumstances takes place, which brings a regulation into operation, though the thing prescribed by the regulation is not done by the person in charge, yet the regulation can hardly be said to be infringed by him, till he knows, or ought to have known, and but for his negligence would have known, of the change of circumstances" (a).

A regulation is not infringed until there is an opportunity of complying with it.

Although the literal interpretation of the statute was departed from in determining what was an infringement of the regulations within its meaning, the penalty was strictly enforced when infringement was proved. In the

(y) 36 & 37 Vict. c. 85; *The Calypso* and *The Mississippi*, Ad. Ct. 7th, 8th, and 9th March, 1878. Cf. *The Chilian* (1881), 4 Asp. M. C. 473; *The Trave*, 68 Fed. Rep. 390, where the use of a mouth fog-horn was excused.

(z) Per Lord Watson, *The Voorwaarts* and *The Khedive* (1880), 5 App. Cas. 876, 901.

(a) Per Lord Blackburn, *The Voorwaarts* and *The Khedive* (1880), 5 App. Cas. 876, 894; *The Emmy Haase* (1884), 9 P. D. 81. Cf. per Brett, M. R., in *The Beryl* (1884), 9 P. D. 137; *The Ngapoota*, (1897) App. Cas. 391; *The Meanachy*, (1897) App. Cas. 351; *The Grenadier v. The August Korff*, 74 Fed. Rep. 974.

same case in which the above dictum of Lord Blackburn occurs, the House of Lords held that there might be an infringement of the regulations, although those in charge of the ship did all that could be expected of seamen of ordinary skill and nerve, and although they were guilty of no act which at common law, and apart from the statute, would amount to negligence.

*The Voor-
waarts and
The Khedive.*

The circumstances in this case, *The Voorwaarts* and *The Khedive* (b), were as follows:—The two vessels, ocean steamships of 3,000 and 3,740 tons respectively, were approaching each other at night without risk of collision on nearly opposite and parallel courses, the green light of each being visible to the other on her starboard bow. At this time both vessels were going at full speed. When the vessels were somewhat less than a mile apart *The Voorwaarts* ported and showed her red light to *The Khedive*. This was a wrong manœuvre, and caused risk of collision. Thereupon the captain of *The Khedive*, without easing his engines, put his helm hard-a-starboard, and at the same moment gave the order to stand by the engines. One minute and a half afterwards he put his engines full speed astern. The collision occurred a minute and a half after this. The engines at the moment of the collision were going full speed astern. They ought to have been stopped and reversed as soon as the red light of *The Voorwaarts* appeared; at the moment when the order to put *The Khedive's* helm hard-a-starboard was given. The absolutely right manœuvre was therefore not adopted by *The Khedive*, and it was held by the House of Lords that, the "crossing" rule having been infringed without necessity, *The Khedive* was in fault under the statute. In the Court of Appeal it had been held that though the captain of *The Khedive* was wrong in not stopping and reversing at the moment when *The Voorwaarts'* red light was seen, yet that his error did not prove him to be deficient in ordinary care, skill, or nerve, and that, therefore, the collision not having been caused by negligence of those on board *The Khedive*, the owners of *The Voorwaarts* were alone liable. In the House of Lords it was held that, *The Khedive* having been within the operation of the crossing rule, and there being

(b) 5 App. Cas. 876. Cf. *The Jay Gould*, 19 Fed. Rep. 765.

no special circumstances to justify a departure from the regulations, she was by the words of the statute to be deemed to be in fault, and that the question whether or no her captain had been in fact guilty of negligence was immaterial. *The Voorwaarts*, which by porting had brought about risk of collision in the first instance, and had kept her engines going at full speed up to the moment of collision, was held in fault both in the Court of Appeal and in the House of Lords.

From this case it would appear that the House of Lords considered that the purpose of the legislature was to substitute a rigid adherence to the regulations for the discretion which a seaman was, under the previous law, at liberty to exercise; and that a justification for the harshness of the new enactment was to be found in the number of collisions which would be avoided if a rigid and almost mechanical adherence to the regulations was substituted for the uncertainty which is inseparable from an application depending upon the discretion of seamen (c).

The facts of *The Khedive* did not call for a decision as to the effect of the statute, where the infringement of the regulations was, though unsuccessful as regards averting collision, not only not negligent, but the only or the best chance of escaping collision. In *The Benares* (d) the Court of Appeal was called upon to decide this point. It was held that in such a case, *The Voorwaarts* and *The Khedive* did not apply, and that a ship was not to be held in fault under the statute because her captain does not comply with the letter of the regulations, if such non-compliance was the only chance of escaping collision. In such a case the Court held that departure from the rules was "necessary in order to avoid immediate danger" within the meaning of Art. 23 of 1880 (the present Art. 27), and that therefore the penal clause of the statute did not apply. The facts in *The Benares* were peculiar, the collision having been caused mainly by *The Benares* not having a red light exhibited on her port

(c) Whether it is desirable, or possible, by Act of Parliament to fetter the exercise of a seaman's discretion in the throes of a collision seems doubtful. See *per* Lindley, L. J., in *The Memnon* (1889), 59

L. T. at p. 291; (1889), 6 Asp. M. C. 488.

(d) 9 P. D. 16, followed in *The Sapphire* and *The Girdleness*, Ad. Ct. Fed. 27th, 1884.

The Benares. side, and having very shortly before the collision exhibited a green light on that side. The following passage is from the judgment of Brett, M. R.:—"When *The Benares*' green light, and the green light alone, was seen, *The Gerarda* did no wrong by starboarding, for it was impossible, as it was then disclosed, for her to see how immediate was the then danger of collision. The vessels, however, eventually came so close to each other that the actual position of things was discovered, the port side of *The Benares* without a red light becoming visible to those on *The Gerarda*. Under these circumstances what was the master of *The Gerarda* to do? By Art. 18 (e), if there was nothing else in the circumstances, he ought to have stopped and reversed. But the rules of navigation are contained, not in one article, but in all the articles, and Art. 23 is as much to be observed as Art. 18. The navigation of vessels is to be conducted with a regard to both of them. As I understand one part of *The Khedive*, if *The Benares* had put *The Gerarda's* officer in such a position that every reasonable man would have done what the officer of *The Gerarda* did, yet if the Court could not come to the conclusion that the case was brought within Art. 23, *The Gerarda* would be held likewise to blame. But in this case the question is whether it is brought within Art. 23 and taken out of Art. 18? Was the necessity of the case such, and were the circumstances so special, that they rendered a departure from Art. 18 necessary? We are advised that these vessels were so placed that at the time when, under ordinary circumstances, Art. 18 would have been applicable, the position was such that the only chance of escape was for *The Gerarda* to starboard and continue full speed ahead. There was, therefore, a necessity within the meaning of Art. 23 for a departure from the rule laid down in Art. 18, and the facts take the case out of Art. 18. But then it has been argued that the danger referred to in Art. 23 is not the danger to either of the vessels approaching each other, but [to] some outside danger. The decision of the House of Lords in *The Khedive* gives no countenance to any such contention as this, and there is nothing in that case

to show that the present case is not within the meaning of Art. 23.” Bowen, L. J., says: “In truth, unless some reasonable (f) force is given to Art. 23, and to the exception it contains, a captain will have to sail with his eyes open into the jaws of death. If he obeys Art. 18, let us assume that it is certain death for his passengers and crew, that he has only one chance still open to him, and that by disobeying the particular rule. Such a case would surely be one in which a departure from the rules becomes necessary; otherwise a captain’s duty would be to obey Art. 18, and go cheerfully to the bottom of the sea with his ship and all on board, sooner than take the one chance of safety still remaining to him. Such an interpretation of the regulations was never, in my opinion, intended by the House of Lords. I am of opinion that a departure from Art. 18 is justified when such departure is the one chance still left of avoiding danger which otherwise was inevitable.”

In *The Memnon* (g), on the other hand, it was held that necessity for departure from the rules had not been established; and the principle which should guide the Court in determining whether in any case the evidence establishes such necessity was clearly stated. The Court of Appeal, affirming the judgment of Butt, J., held that *The Memnon* was to blame for not stopping sooner in compliance with the regulations, on the ground that the officer in charge of her was not justified in assuming, under the circumstances, that “*The San Salvador* would do what was right,” and this decision was, in turn, affirmed by the House of Lords. Lord Herschell, in addressing the House, said: “When once it is shown that it was brought home, or ought to have been brought home, to the mind of the master of a vessel, that the courses upon which the ships were approaching, and the circumstances, involved risk of collision, the onus is thrown upon him of justifying his not doing that which the rule prescribes. . . . The question whether a departure was necessary or not must, no doubt, be determined by the Court; but it must be determined upon the point being raised, and upon some

(f) This refers to the argument of counsel that the risk referred to in Art. 23 (of 1880) was a risk other than that of collision alone.

(g) 6 Asp. M. C. 488.

evidence being tendered to the Court, to show that to have followed the rule would have either created that very risk of collision, which it was the purpose of the rule to avoid, or have increased instead of diminished the risk of collision." This case must be distinguished from *The Otto* and *The Thorsa* (*h*), where it was held that the one ship was justified in expecting the other to do the right thing (porting or ceasing to starboard), and therefore in not stopping and reversing, until the collision became inevitable.

Breaking
down of fog-
horn.

The breaking down of a mechanical fog-horn has been held to make a departure from the regulations necessary, and a ship sounding a mouth-horn under such circumstances was held not to be in fault under the statute (*i*).

Ships' lights
a reasonable
compliance
with the
regulations
required.

It appears that what the law requires in respect of the fixing and mechanical details of ships' lights is a reasonable compliance with the regulations. A very small departure from the letter of the regulations on these points is not an infringement within the meaning of the statute. This was the view taken by the Court in *The Fire Queen* (*k*). There an obscuration by the starboard cathead of the green light to the extent at the distance in question of an arc of $2\frac{1}{2}$ or 3 degrees was held not to be an infringement: "What we must look to," said Butt, J., "is whether there is a reasonable compliance with the regulations." The learned judge held also that the obscuration did not and could not have contributed to the collision; but the value of the decision upon the first point is not, it is submitted, thereby lessened. Having regard to the class of people for whose guidance the regulations are framed, and by whom they are worked, and also to the circumstances under which they are worked, it is difficult to suppose that the legislature could have intended anything more than a reasonable compliance with the regulations as to lights and sound signals. In *The Glamorganshire* (*l*), it was held that carrying the side lights

(*h*) *Wilson v. Currie, The Otto and The Thorsa*, (1894) App. Cas. 116.

(*i*) *The Chilian* (1881), 4 Asp. M. C. 473; *The Trave*, 68 Fed. Rep. 390.

(*k*) (1887), 12 P. D. 147. Cf. *The General Birch*, 6 Quebec L. R.

300, as to shape of lantern; *The Sans Pareil*, (1900) P. 267, 270.

(*l*) (1888), 13 App. Cas. 454. *The Gannet*, (1900) App. Cas. 234, and *The Philadelphian*, (1900) P. 262, are also decisions as to the position of lights.

in the rigging, where it is impossible for them to be fixed with mathematical accuracy, did not bring the ship within the penalty of the statute. So where lights have to be shifted from riding, towing, or fishing to under-way lights or *vice versa*, a ship would, probably, not have been held in fault under the statute because the change of lights was not instantaneous. As regards the steering and sailing rules, the decision in *The Khedive* (*m*) shows that a stricter view is taken.

The regulations are "for preventing collisions at sea," and it would seem that, if that were their only object, where a collision is from the first inevitable, the regulations do not apply, and therefore cannot be infringed. The point arose in *The Buckhurst* (*n*), but the facts of that case made a decision of the point unnecessary. It seems, however, to have been the opinion of Sir R. Phillimore that the statute might apply, though the collision is inevitable. In *The Voorwaarts* and *The Khedive* the opinions of the majority of the learned lords, and the judgments of the Court of Appeal and Admiralty Division assume that the collision was not inevitable when *The Voorwaarts* first showed her red light. But Lord Blackburn (*o*) appears to have been of opinion that the collision was then inevitable, and that the manœuvre of *The Khedive*, though well adapted to lessen the force of the collision, being contrary to the regulations, placed her in the wrong under the statute. As pointed out above, there is some difficulty in supporting this view of the effect of the statute, if the only object of the regulations is the prevention of collisions. But in *The Khedive* Lord Watson stated that the object of the "stop and reverse" rule is "to obviate the risk and minimize the results of collision" (*p*). A regulation having this object may well be infringed, where the collision, but not the damage, is from the first inevitable.

Whether the statute applied where the collision is from the first inevitable;

It is submitted that *The Khedive* did not decide that a ship would be held in fault for a step taken in the agony of

or where the infringement is in the

(*m*) *Supra*, p. 62.

(*n*) (1881), 6 P. D. 152.

(*o*) (1880), 5 App. Cas. 895.

(*p*) (1880), 5 App. Cas. 903, 904.

And see 9 App. Cas. 651, 652.

As to whether 57 & 58 Vict. c. 60,

authorizes regulations to be made

with this object, see below, p. 299.

agony of the collision ;

a collision and due entirely to the "imminence of the danger (*q*). In the case, for example, of a sailing ship going about—"altering her course"—under the bows of a steamship, where the latter has approached her so close as to frighten her into doing something, the question arises, whether the sailing ship should be held in fault under the statute? If she does not alter her course until the collision is inevitable it would seem that the statute does not apply at all (*r*). If she stands on until the risk is so great that human nature can go no further, and then bears up or goes about, it would seem reasonable to hold that her change of course at such a moment is not an infringement of the regulations, but rather an act caused by the imminence of the peril and the fault of the other ship.

or where previous negligence renders departure from the regulations necessary.

It seems that fault would not have been presumed where a ship was unable to comply with the regulations, although such inability was consequent upon, though not caused by, previous negligence on her part. If, for example, a ship lost one of her side lights in a collision caused by her own fault, and before she could replace it a second collision was caused by the absence of her side light, it seems that she would not have been held in fault under the statute. Her inability to comply with the regulations could hardly be said to be caused by the negligence which caused the first collision (*s*), and unless she had an opportunity of complying with the regulations, she could not be said to have infringed them (*t*). But a vessel did not escape the consequences of an infringement of the regulations, though she was in fact unable to comply with them, if such inability was caused by want of a proper look-out, or other immediate negligence (*u*).

Regulations of which an infringement brings the ship within the statute.

The sanction of sect. 419 (4) extended to other regulations besides those made under sect. 418 of M. S. Act, 1894. Collision regulations for particular localities have been made by certain Acts which either incorporate the penal clause of the Merchant Shipping Acts or contain themselves a similar clause. Thus it was also held that under 37 & 38 Vict. c. 52,

(*q*) The captain of *The Khedive* deliberately elected to depart from the regulations.

(*r*) See *supra*, pp. 61, 67.

(*s*) See *The Douglas*, 7 P. D. 151.

(*t*) *Supra*, p. 61.

(*u*) See *The Emmy Haase*, 9 P. D. 81.

an infringement of the statutory rules in force in the sea channels and approaches to the River Mersey had the same effect as an infringement of the sea regulations (*x*). And a ship infringing rules made under the Dockyard Ports Regulation Act, 1865 (28 & 29 Vict. c. 125), s. 7, would, it seems, be deemed to be in fault under the statute. The Solent Navigation Act, 1881 (44 & 45 Vict. c. 219) (local), contains (sect. 8) a provision to the effect that a ship infringing any regulation made under that Act shall be deemed to be in default, unless it is shown to the satisfaction of the Court that the infringement was necessary (*y*).

But the statute did not apply to an infringement of rules, such, for example, as the Thames rules (*z*), made under a local Act, which did not incorporate the penal clause of the Merchant Shipping Acts. A ship infringing these rules was not held in fault unless the infringement did, in fact, contribute to the collision.

Effect of an
infringement
of local rules.

PERIOD VI.—1911 TO THE PRESENT TIME.

By the Maritime Conventions Act, 1911 (*a*), s. 419 (4) of the Merchant Shipping Act, 1894, was repealed as to all collisions in respect of which proceedings were commenced after the Act was passed, viz., on the 16th December, 1911, even though the collision had occurred before (*b*). The obligation to observe the regulations remains as during the last two periods, but the penalty imposed by sect. 419 (4) on non-observance is taken away.

The effect of the Act is to abolish an arbitrary rule by which any infringement, which by possibility might have contributed to the collision, rendered a vessel to blame and to "leave the Court to follow what is a reasoning judgment and to say, 'Did this want of obeying the regulations in any

Effect of the
Maritime
Conventions
Act, 1911.

(*x*) *The Lady Downshire* (1879), 4 P. D. 26; *The Vera Cruz* (1884), 9 P. D. 88. *The Devonian*, (1901) P. 221, is a similar decision under the Mersey Channels Act now in force, 60 & 61 Vict. c. 21.

(*y*) This provision not having been repealed by the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), would appear to be still in force.

(*z*) *The Harton* (1884), 9 P. D. 44; *The Monte Rosa*, (1893) P. 23, 30. In *The Swansea* and *The Condor* (1879), 4 P. D. 115, this question was considered but not decided.

(*a*) 1 & 2 Geo. 5, c. 57, ss. 4 (1), 9 (2).

(*b*) *The Enterprise*, (1912) P. 207.

way contribute to the collision?' not 'Might it possibly have done so?' (c). It has thus now again become necessary to prove that non-observance of a regulation was the cause or part of the cause of a collision or of the damage resulting from the collision, as it always had been before 1873. Vessels are no longer liable to pay for damage they did not cause, nor are they now always liable to pay half damages in every case of joint fault, for by sect. 1 of the Maritime Conventions Act, 1911, their liability is to make good the damage or loss in proportion to the degree in which each vessel was at fault (d).

Failure to
sound helm
signals.

One of the commonest breaches of regulation is the omission to give the appropriate sound signal denoting an alteration of course. Under the former law such a breach almost always rendered the offending vessel liable to half damages, as it was rarely possible to prove that her failure to observe the regulations could not possibly have contributed to the collision, although it might be clear that in fact the omission had little or no effect. Under the present law, if the omission had no effect, no liability is incurred; if little, the degree of blame must be estimated, for the vessel is not liable to make good more of the damage or loss than is proportionate to her degree of blame (e). The decision of the question whether the failure to sound a signal contributed to a collision will, however, often depend on the judgment of the Court as to what would have been its effect on the mind of the man in charge of the other vessel if it had been sounded, and to answer this hypothetical question it will be frequently necessary to consider, whether the omission could possibly have contributed to the collision. A practical test suggested in *The Tempus* (f) is, would sounding the signal have made it easier for the other vessel to do something to avoid the collision?

The obligation to
observe the
regulations.

The statutory obligation to obey the regulations remains, so that it is negligence not to observe an applicable regulation, unless the departure from the prescribed course can

(c) *Per* Bargrave Deane, J., *The Enterprise*, (1912) P. 207, 211.

(d) 1 & 2 Geo. 5, c. 57, s. 1; see *infra*, p. 143.

(e) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1.

(f) (1913) P. 166, at p. 171, *per* Evans, P.

be justified under Art. 27 (*g*), even, it is submitted, though no lack of ordinary skill, care, or nerve is displayed. Thus, in *The Khedive* (*h*), the master of that vessel would under the present law still have been held guilty of an act of negligence, and the question for the Court would have been, did or did not that negligence contribute to the collision? In that case there appears to have been a difference of opinion on the point between the nautical assessors, those in the Court of first instance thinking that it did, and those in the Court of Appeal that it had no material effect. The question was not decided, for it was then immaterial, but it would seem as if the decision would have turned on where the burden of proof lay. If it had been for *The Khedive* to clear herself it is doubtful if she could have done so, and almost as unlikely that *The Voorwaarts* could have proved *The Khedive* in fault. The question whether a breach of the regulations contributed to the collision is one of pure fact for the Court to decide on the whole of the evidence. In the majority of cases a satisfactory conclusion can be reached without considering where the burden of proof lies, but the decision in doubtful cases will probably depend on where the onus rests. Is it upon the vessel infringing a regulation, the breach of which may have contributed to the collision, to excuse her infringement and to prove that it did not contribute, or does she in a doubtful case escape all liability for a breach, because the other vessel is unable to prove that it did? It is submitted that the rule laid down in *The Fenham* (*i*) is good law to-day, and that the burden is upon the infringing vessel to establish that the breach of her statutory duty did not contribute to the collision.

The cases decided on the repealed presumption of fault rule enacted by sect. 419 (4) of the Merchant Shipping Act, 1894, are of little value to-day where the decision was adverse to the infringing vessel, but all in which infringements were excused are of *a fortiori* force and the principles laid down in such cases are fully applicable to cases under the present law.

Applicability
of decisions in
sect. 419 (4)
of M. S. Act,
1894.

(*g*) See *supra*, p. 63.

(*h*) (1880), 5 App. Cas. 876.

(*i*) (1870), L. R. 5 P. C.; see
supra, p. 57.

STATUTORY OBLIGATION TO OBSERVE REGULATIONS.

57 & 58 Vict.
c. 60, s. 422.
Former
presumption
of fault where
the ship fails
to stand by
and assist.

In one other case damages could formerly be recovered without proof or existence of negligence on the part of the ship sued. By the Merchant Shipping Act, 1894, s. 422, it is enacted as follows:—

“(1.) In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any)—

(a) To render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary to save them from any danger caused by the collision; and to stay by the other vessel until he has ascertained that she has no need of further assistance; and also

(b) To give to the master or person in charge of the other vessel the name of his own vessel, and of the port to which she belongs, and also the names of the ports and places from which she comes and to which she is bound.

“(2.) If the master or person in charge of the other vessel fails to comply with this section, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary (*k*), be deemed to have been caused by his wrongful act, neglect or default.

“(3.) If the master or person in charge fails without reasonable cause to comply with this section he shall be deemed guilty of a misdemeanor (*l*), and if he is a certificated officer an inquiry into his conduct may be held and his certificate cancelled or suspended.”

“Standing by” was first made a statutory duty by the Merchant Shipping Act, 1862 (*m*). Previous to that Act, however, the temptation for a ship to run away from another with which she has been in collision by her own fault, in the hope of escaping detection, as well as the duty of each ship after a collision to render assistance to the other, were distinctly recognized by the Admiralty Court. Failure, however, to stand by a ship injured in a collision, was only punished by

(*k*) For an example of a case in which the facts amounted to “proof to the contrary,” see *The Tryst*, (1909) P. 333.

(*l*) Punishable by fine of 100*l*. or imprisonment for six months: 57 & 58 Vict. c. 60, s. 680 (1).

(*m*) 25 & 26 Vict. c. 63, s. 33. It was introduced into the statute by Lord Kingsdown. See *The Hannibal* and *The Queen* (1867), L. R. 2 A. & E. 53, 56; 168 Hansard's Parl. Deb. 281.

compelling the defaulting ship, although she was free from blame in other respects, and successful in the suit, to pay the costs of the suit (*n*).

But now by the Maritime Conventions Act, 1911, s. 4 (2), it is enacted that the failure of the master or the person in charge to comply with the provisions of sect. 422 quoted above, shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default, and sub-sect. (2) shall be repealed.

Presumption of fault repealed.

The "person in charge" mentioned in sect. 422 is the master. If the master is below, the duty to stand by lies on the mate or other person in charge of the deck, until the master comes on deck; if life or property is still in danger, it is then transferred to the master (*o*). Where a collision occurred between a ship in tow and a third ship, it was said by Sir R. Phillimore that the law required the tug to stand by the ships in collision (*p*).

On whom the statute casts the duty to stand by.

The penalty for not "standing by" was strictly enforced. A ship must obey the law although there is some risk to herself, and the other appears to be in no danger. A steamship was held in fault for not standing by, or sending a boat to, another with which she had been in collision, although, being in narrow waters, and herself of great length (450 feet), she could not do so without risk of going ashore, and although she had hailed another ship, better able to assist, to do so (*q*).

What is reasonable cause for failure to stand by.

A barque was held in fault for not standing by, though her fore compartment to the collision bulkhead was full of water, and she was five or six feet by the head. The collision was in the channel, four or five miles from land, and the weather was bad (*r*).

Where the ship is unable literally to comply with the law, and, without fault on her own part, parts company with the

(*n*) *The Celt* (1837), 3 Hag. Ad. 321.

(*o*) *Ex parte Ferguson and Hutchinson* (1871), L. R. 6 Q. B. 280.

(*p*) See *The Hannibal* and *The Queen* (1867), L. R. 2 A. & E. 53; the three last-mentioned cases were decided under 25 & 26 Vict. c. 63, s. 33.

(*q*) *The Adriatic* (1876), 3 Asp. M. C. 16. The present Act is more stringent than former Acts (25 &

26 Vict. c. 63, s. 33; 34 & 35 Vict. c. 110, s. 9). Other cases under the Act of 1862 are *The Lucia Jantina* and *The Mexican* (1864), Holt, 130; *The Queen of the Orwell* (1863), 7 L. T. 839; *The Eliza* and *The Orinoco* (1864), Holt, 98. For the law in America, see *Boston Towboat Co. v. Winslow*, 76 Fed. Rep. 595.

(*r*) *The Valleyo*, Ad. Div. 27th April, 1887.

vessel with which she has been in collision, those on board her must do their best to render assistance. In such a case, if the collision is at night, and she sees rockets or other signals of distress from the other vessel, it is her duty to return them by similar signals, or in any way within her power. In *The Emmy Haase* (s) a vessel so neglecting to return signals of distress was held in fault for the collision.

Failure to stand by does not affect right to salvage.

It would seem that the right of a ship to salvage remuneration, where she renders assistance to another with which she has been in collision by no fault of her own, is not affected by the statute. It was so held in the case of a tug, whose tow was damaged in a collision with a third ship, for which the latter was in fault (t).

Collision with boat.

The "standing by" section of the Merchant Shipping Act, 1862, was held to apply in the case of a collision with an open fishing-boat (u).

Application of sects. 419 (4), 422, to foreign ships.

The enactments raising a statutory presumption of fault against (1) a ship which infringed the regulations, and (2) a ship which failed to render assistance, applied to all ships, whether British or foreign, and whether the collision occurred in British or foreign waters or on the high seas (x). There is no express decision on the point; but it was in several cases assumed that 36 & 37 Vict. c. 85, s. 17, applied to a British ship in collision with a foreign ship, whether in British waters (y) or on the high seas (z); and to a foreign ship (a) under the same circumstances. Both sect. 419 (4) and sect. 422 were probably rules of evidence or procedure,

(s) (1884), 9 P. D. 81.

(t) *The Hannibal and The Queen* (1867), L. R. 2 A. & E. 53.

(u) *Ex parte Ferguson and Hutchinson* (1871), L. R. 6 Q. B. 280.

(x) *The Magnet* (1873), L. R. 4 A. & E. 417. See per Sir R. Phillimore in *Reg. v. Keyn* (1877), 2 Ex. D. 63, 85. The doubt expressed by the Privy Council in *The Fanny M. Carvill* (1875), 2 Asp. M. C. 565, 569, appears to be not well founded. The question was raised in *The Koning Willem I.*, (1903) P. 114; but the facts rendered a decision unnecessary.

(y) *The Vera Cruz* (No. 1)

(1884), 9 P. D. 88.

(z) *The British Princess and The Sedmi Dubrovacki*, Ad. Ct. March, 1878; *The Englishman* (1878), 3 P. D. 18; *The Voorwaarts and The Khedive* (1880), 5 App. Cas. 876.

(a) *The Magdeburgh and The Henry Willard* (an American ship), Ad. Div. 16th Jan. 1885, where the collision was on the high seas; *The Love Bird* (1881), 6 P. D. 80, where, from the name of the ship deemed to be in fault (*The Pansewitz*), it would seem that she was foreign. The collision was at the entrance to the Skager Rack.

applicable to foreign ships as part of the *lex fori* (b). A Queen's ship was held in fault under sect. 17 of the Merchant Shipping Act, 1873 (c); but it is clear that sect. 419 (4) did not apply to a King's ship (d).

Enactments similar to these provisions of the Merchant Shipping Act are in force in several of the British colonies (e). In America there is no such law as sect. 419 (4) (f); but an Act of Congress (4th Sept. 1890) has enacted a "standing by" law similar to sect. 422.

The Maritime Conventions Act, 1911, by sect. 9 (1) extends throughout his Majesty's dominions and to any territories under his protection, and to Cyprus, but the five great self-governing dependencies, viz., the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland are excepted (g).

Extent of
application of
1 & 2 Geo 5,
c. 57.

(b) See as to this, pp. 220, 225, *infra*. In *Dowell v. General Steam Nav. Co.* (1885), 5 E. & B. 195, sect. 28 of 14 & 15 Vict. c. 79, was held to be a rule of evidence. See further *infra*, p. 225, as to the application of these sections to foreign ships.

(c) 36 & 37 Vict. c. 85; *The Hochung* and *The Lapwing* (1881), 7 App. Cas. 512.

(d) *H.M.S. Sans Pareil*, (1900) P. 267. In *The Astrakhan*, (1910) P. 172, the question was raised, but not decided, whether sect. 419 (4) applied to a vessel of war of the King of Denmark.

(e) Canada, 43 Vict. c. 29; see *The Clara Killam*, 2 Quebec L. R. 56; *The Govino*, 6 Quebec L. R. 57; Queensland, 46 Vict. No. 12; South Australia, 44 & 45 Vict. No. 237; Victoria, 28 Vict. No. 255; New South Wales, 25 Vict. No. 7; New Zealand, 41 Vict. No. 54; Prince Edward's Island, 30 Vict. c. 13, s. 2.

(f) The Supreme Court has declared that it will not "accept blindly an artificial rule which is to determine in all cases whether the navigator is liable to the charge of negligence in causing any damage that may happen": *The Farragut*,

10 Wall. 334. But the burden is on a vessel which has infringed the regulations to prove that the infringement could not have contributed to the collision: *The Pennsylvania*, 19 Wall. 125; *The Ariadne*, 2 Bened. 472; *The Ice King*, 52 Fed. Rep. 894; *The Bolivia*, 49 Fed. Rep. 169; *The Jesse W. Knight*, 45 Fed. Rep. 590; *The Pennsylvania*, 12 Fed. Rep. 914; *The Providence*, 98 Fed. Rep. 133. If, however, such proof is forthcoming, a ship will recover full damages although she did not comply with the regulations: *Chamberlain v. Ward*, 21 How. 548, 567; *The Gray Eagle*, 9 Wall. 505; *The Continental*, 14 Wall. 345; *The Sunnyside*, 1 Otto, 208; *The City of Washington*, 2 Otto, 31. There are several decisions of the State of New York Courts to the same effect.

(g) The Act has been brought into operation in Canada by the Canadian Statute 4 & 5 Geo. 5, c. 13 (1914); in Australia by sects. 396, 259 to 263, and 264 (3) of the Navigation Act, 1912 (No. 4 of 1913); in New Zealand by Statute No. 3 of 1912, ss. 2 to 12; and in Newfoundland by the Statute 3 Geo. 5, c. 30 (1913).

CHAPTER III.

LIABILITY.

Persons
liable: the
actual wrong-
doer.

THE person primarily liable in damages to the sufferer by collision is he by whose negligent act the loss was occasioned. The shipowner navigating his own vessel, the master, mate, pilot or other person in charge of the ship, who gave a wrong order to the helm (*a*), the helmsman who directed the ship's course wrongly, the seaman on the look-out who negligently failed to see and report the approach of the other vessel, may all be sued as wrong-doers, and are liable for damages (*b*).

Thus, when an action was brought against a pilot on board a King's ship for injury to the plaintiff's ship by the King's ship, it was held by Lord Kenyon that, though the pilot might be obliged to act in obedience to the order of the lieutenant in command of the King's ship, yet the pilot would be liable, if the collision happened by his personal misconduct. Upon proof, however, that the collision occurred by reason of an alteration of the helm ordered by the lieutenant, the plaintiff was non-suited (*c*).

Liability of
master.

It has been said that the master is liable for the negligent and wrongful acts of his crew as well as for his own acts (*d*). His liability as carrier, unless specially limited, may extend so far; but in no reported case has he been held liable in tort for wrongful acts of the crew (*e*). For wilful

(*a*) See *Stort v. Clements* (1792), Peake, 144.

(*b*) *Stort v. Clements*, *ubi supra*; *Smith v. Voss* (1858), 2 H. & N. 97; *Lawson v. Dunlin* (1850), 9 C. B. 54, were actions against pilots. There is no jurisdiction in Admiralty in similar cases, see *infra*, p. 277.

(*c*) *Stort v. Clements* (1792), Peake, 144.

(*d*) Story on Agency, §§ 314—317; Molloy, l. 2, c. 3, s. 13. Cf. *Pilk v. Venore*, 1 Molloy, 359 (ed. 1769), as to the liability of the master for embezzlement by the crew. And in America it has been so held: *Denison v. Seymour*, 9

Wend. 9.

(*e*) See *Aldrich v. Simmonds* (1816), 1 Stark. 214; *Oakley v. Speedy* (1879), 4 Asp. M. C. 134; *Blakie v. Stemberbridge* (1859), 6 C. B. N. S. 894. The contrary has been held in a Victorian Court: *Clancy v. Harrison*, 4 Victoria L. R. 437 (L.); *Stacpoole v. Bettridge*, 5 Victoria L. R. 302 (L.). During the sixteenth and seventeenth centuries the master was almost always defendant in Admiralty suits for collision and other matters for which the ship was arrested; and on proof of negligence the sentence went against him personally.

injury to another ship by pilot or crew he clearly is not liable (f).

As regards the responsibility of the master when a pilot is on board, whether by compulsion of law or by the master's or owner's choice, it seems clear that for a collision caused by the fault of the pilot the master is not answerable, if the pilot has been placed in charge of the ship properly and in the ordinary course of navigation (g).

The statutory limitation of liability (h) does not apply to protect an owner, or a part owner, by whose actual fault or with whose privity the collision occurred. Such an owner is liable for full damages; and in the case of several owners, if the statutory amount of their liability is insufficient to recompense the sufferer by the collision, the owner by whose actual fault or privity the loss was occasioned is liable for the deficiency (i).

No limitation of liability of the actual wrong-doer.

In the case of a collision with one of his Majesty's ships, by the fault of those on board her, the actual wrong-doer is the only person against whom there is a right of action (k).

The actual wrong-doer, being commonly a seafaring man of small means, can seldom give adequate redress, and may be not worth suing. In such cases the substantial remedy is to be sought, either in Admiralty against the ship, or in a common law court against the employer of the actual wrong-doer. It will be convenient to consider his liability first (l).

Liability of the ship-owner.

(f) *Bowcher v. Noidstrom* (1810), 1 Taunt. 568; *McManus v. Crickett* (1801), 1 East, 106.

(g) *Kent's Comm.* vol. 3, § 176. As to the respective duties of master and pilot, see below, p. 238.

(h) See below, p. 170, as to the statutes limiting owner's liability.

(i) See *The Triune* (1840), 3 Hag. 114. In this case (decided under 53 Geo. 3, c. 159), after decree condemning the owner (who intervened in the suit) and his ship and freight, the ship was sold, and the proceeds were insufficient to pay the full amount of damages and costs. A monition was decreed against the owner, who was in charge of the ship at the time of the collision, to

pay the deficiency, and, upon his failing to do so, he was attached.

(k) *Infra*, p. 109.

(l) Whether by the civil law the shipowner was liable for a collision caused by the fault of the master or crew seems to be a disputed point. *Bynkershoek, Quæst. Jur. Civ.* l. 4, c. 23, contends that he is not liable: *ei (magistro) autem mandatum non est aliorum naves dolo vel culpâ obruere; quod si fecisset, ipse, quod dedit luat, non exercitor*; so also *Bynk. Observationes Jur. Rom.* l. 4, c. 16. On the other hand, *Voet, ad Pandect.* 14, l. 7, makes the shipowner liable: *quod si deliquerit (magister) si quidem in ipso officio cui erat propositus, dum forte datâ operâ vel culpâ atque imprudentiâ mani-*

In most cases the owner of the ship is the employer of those on board and in charge of her, and is liable for their negligent acts. So generally is this the case that it has been held that, in the absence of proof to the contrary, those in charge of a ship will be presumed to be in the employment of her owners (*m*). And *primâ facie* the owners are the persons so described upon her register. But the register is not conclusive evidence of ownership; and if it is shown either that the actual owner is a different person from the registered owner, or that the registered owner is not the employer of the person causing the collision, the presumption as to the liability of the registered owner is rebutted.

The ship-owner is liable, not *quâ* owner, but only as employer of the actual wrong-doer.

The liability for damage by a ship does not attach to her owner *quâ* owner. It is only as master or employer of the persons whose negligent act caused the damage that he incurs any liability. "The owner would not be liable merely because he was owner, or without showing that those navigating the vessel were his servants" (*n*). In the Maritime Conventions Act, 1911 (*o*), it is enacted that "this Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression 'owners' included such persons and in any case where by virtue of any charter or demise or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers, or other persons for the time being so responsible." The expression "owners" is first used in the Act in sect. 2, but as the section quoted does no more than declare the existing law as to the respective liability of owners and others respon-

festâ in navigium alienum impegit suum . . . exercitores ex quasi delicto teneri constat. Huberi Prælect. Jur. Civ. 14, 1, 8; 3 Kent's Comm. 161; to the same effect. Cf. also *per* Ware, J., *The Rebecca*, Ware, 188; *The Phebe*, *ibid.* 263, 268. The *exercitor* (the person for whose benefit the ship was worked), and not the *dominus* (general owner), was generally liable for the acts of the master.

(*m*) See *Joyce v. Capel* (1840), 8 C. & P. 370; *Hibbs v. Ross*

(1866), L. R. 1 Q. B. 534, and cases there cited; *Frazer v. Guthbertson* (1881), 6 Q. B. D. 93, 98; *Chasteauneuf v. Delange* (1882), 7 App. Cas. 127; *Smith v. Bailey*, (1891) 2 Q. B. 403.

(*n*) *Per* Lord Cairns, C., *River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, 751; and *per* Lord Blackburn, *Simpson v. Thompson* (1877), 3 App. Cas. 279, 293; *Hibbs v. Ross*, *ubi supra*.

(*o*) 1 & 2 Geo. 5, c. 57, s. 9 (4).

sible for the navigation of vessels, the liabilities imposed by sect. 1 will not fall differently to those imposed on owners in other sections of the Act.

It is further necessary, in order to fix the shipowner with liability, that the negligent act complained of was an act of the servant acting within the scope of his employment. In the ordinary case of a collision occurring in the course of the employment of the ship for the owner's benefit no difficulty arises upon this point. But when the ship is employed in a manner not authorized by the owner the question arises whether those on board are acting within the scope of their employment by the owner. In an American case (*p*) where the defendant's servants, acting as volunteers, in shifting a scow, caused her to damage a canal boat, it was held that the defendants (who were dock owners coaling a steamer) were not liable.

The act complained of must be an act of the servant within the scope of his employment.

Where a master, without any instructions from his owner as to towing disabled ships, undertook to assist a disabled ship into port, and whilst attempting to get her in tow negligently ran into and injured her, it was contended that the owner was not liable, because the master in assisting the disabled ship was not acting within the scope of his employment. It was held that he was so acting, and that his owner was liable (*q*).

Salvage service.

Wilful, malicious, or criminal acts of the master and crew can seldom be within the scope of their employment so as to make the shipowner liable. Thus, for a collision caused by the master and crew maliciously driving their ship against another, the owner will not be liable (*r*). So where those on board a ship wilfully cut another ship adrift, and the latter suffered damage in consequence, it was held that the owners

Owners not liable for wilful, malicious, and criminal acts of their servants.

(*p*) *Morrel v. Rheinfrank*, 24 Fed. Rep. 94.

(*q*) *The Thetis* (1868), L. R. 2 A. & E. 365.

(*r*) *The Druid* (1842), 1 W. Rob. 391; *McManus v. Crickett* (1801), 1 East, 406; *Croft v. Alison* (1820), 4 B. & Ald. 590. In *The Seine* (1859), Sw. 411, this defence was pleaded. There is some difficulty in reconciling these with later cases (carriage accidents): *Limpus v. General Omni-*

bus Co. (1862), 1 H. & C. 526; *Page v. Desjries* (1865), 7 B. & S. 137; but the character of the acts in the carriage cases is substantially different from that in the ship cases. In *Beard v. London General Omnibus Co.*, (1900) 2 Q. B. 530, where the conductor was driving, it was held that he was not about his owners' business. For an instance of a wilful attack upon another ship by a tug, see L. R. (1866) 1 A. & E. 64.

of the former were not liable at law, and that their ship could not be sued in Admiralty (s).

The following case shows that the decisions in these cases depend entirely upon the wrongful character of the act, and that casting adrift a craft alongside is not necessarily always wrongful. A flat alongside a steamship for coaling purposes was holed by a floating log, and reasonably expected to sink immediately. The mate of the steamship, for the safety of his own vessel, set the flat adrift, and the flat drove against a ship at anchor. The steamship owners were held in America not to be liable for damage to the anchored ship (t).

But owners are liable for the acts of their servants done in the course of their service and for their master's benefit, though no express command or privity of the owner be proved (u). And owners are answerable for the manner in which their servants navigate their ship, though the wrongful act of the servant is one against which the owners have given express orders (x).

Infringement of the regulations is a misdemeanour, and damage caused thereby is deemed to have been caused by the wilful default of the person in charge of the deck (y). But owners are not relieved from liability for the acts of their servants in such cases (z); nor are they the less liable because the negligence of their servants is criminal, and amounts to manslaughter (a).

Where a ship is being worked by a charterer or hirer, who appoints and pays the officers and crew under a charter-party

Owner's liability where the ship is under charter.

(s) *The Ida* (1860), Lush. 6; the ship was foreign, and the collision was in a foreign river; and see as to this case, *per* Sir R. Phillimore, L. R. (1870) 3 A. & E. 47. Cf. *The Dunlossit*, (1897) App. Cas. 97; *Campbell v. Pennsylvania Rail. Co.*, 85 Fed. Rep. 462; *The Chickasaw*, 41 Fed. Rep. 627. In *Waltham v. Mulgar* (1605), Moore, 776, the Admiralty Court was prohibited where it proposed to exercise jurisdiction in the case of a ship whose crew, against the owners' orders, had piratically seized another ship.

(t) *The Chickasaw*, 41 Fed. Rep. 627.

(u) See *per* Willes, J., *Barwick v. English Joint-Stock Bank*

(1867), L. R. 2 Ex. 259, 265.

(x) *Limpus v. London General Omnibus Co.* (1862), 1 H. & C. 526; *Betts v. De Vitre* (1867), L. R. 3 Ch. 429.

(y) M. S. Act, 1894 (57 & 58 Vict. c. 60), s. 419 (2).

(z) It was so held under the provisions of a former Act: *The Seine* (1860), Swab. 411. See also *Poulton v. London and South Western Rail. Co.* (1867), L. R. 2 Q. B. 534; *Grill v. General Iron Screw Collier Co.* (1866), L. R. 3 C. P. 476.

(a) See *The Franconia* (1877), 2 P. D. 8, 163; *Reg. v. Keyn* (1877), 2 Ex. D. 63.

or agreement which is in effect a demise of the vessel, the owner is not liable at law for damage she may do while in the possession of the charterer. But if the owner remains in possession, either by himself or his agents, he is liable, though the ship is under charter to another. Where a ship was chartered for six months at 20*l.* a week for the carriage of passengers and goods as the charterer should direct, he paying all disbursements and the wages of officers and crew, and the owners keeping the ship in repair, it was held that the owners were liable for a collision caused by the fault of those on board (*b*).

In *Dalyell v. Tyrer* (*c*), H., the lessee of a ferry, hired a tug with her master and crew to assist in working the ferry for a day. A person who had contracted with H. for a season ticket was injured, whilst on board the tug, by the negligence of her crew, who were the owners' servants. It was held that he could recover against the owners, and that his right against them for the negligence of their crew was independent of his right against H. upon the contract.

It has been doubted whether the owners of a ship which is manned by a master and crew who are the owners' servants, but who by the charter-party are bound to obey the orders of a third person who is not the owners' servant, are liable at law for damage done by the ship while acting under the immediate orders of such third person. Upon principle it is difficult to see why the owners, by placing their servants under the control and orders of a third person, should escape liability for their wrongful acts. And in *Fletcher v. Bradick* (*d*) Sir J. Mansfield held the owners liable in such a case.

But where a vessel was one of a fleet of transports engaged in the service of the Government upon an expedition of war,

(*b*) *Fenton v. Dublin Steam Packet Co.* (1839), 8 Ad. & Ell. 835. The decision went upon the words of the charter-party; but it was proved that the owners had appointed and had power to dismiss the crew and officers.

(*c*) (1858), Ell. Bl. & Ell. 899.

(*d*) (1806), 2 Bos. & P. N. R. 182. This case is not satisfactory.

The decision went partly upon the ground that the duty of the officer did not extend to seeing to the working of the ship. The officer was in the service of the Government, who were the charterers. The case was, however, cited without comment by Sir J. Hannen in *The Tasmania* (1888), 13 P. D. 110, 117.

it was held by Cockburn, C. J., that it was an incident to such an employment that all the vessels should obey the orders of those in command of the expedition; and that if one of them damaged another of the fleet, whilst acting in strict obedience to such orders, her owners would not be liable (e).

When a harbour corporation chartered a tug to tow ships to their dock, it was held that they were liable for its default whilst doing "corporation work" (f).

Where a Thames barge was lent by her owner to a person, who navigated her with his own men, it was considered clear by Best, J., that the owners were not liable for damage done by her (g).

Owner can recover over against actual wrong-doer.

The shipowners, or employers of the master or actual wrong-doer, by whose fault a collision occurs, can recover against him any damages which they have been compelled to pay, or any loss which they have suffered by his negligence (h).

Owner not liable for the negligence of one to whom the ship is demised.

It has never been held that the duty to use due care and skill which is incumbent upon every person in the conduct of that which, if misconducted (i), may be harmful to others, attaches to a shipowner whose ship is being navigated by a person who pays the owner for the use of her, but navigates her himself or by his servants (k). On the contrary, it seems clear that in such a case the shipowner is under no such duty, though his ship is chartered or hired for the purpose of navigation, and is in the course of employment for the owner's benefit. The duty above referred to attaches only to those who have the actual conduct of the ship and to their employers; if it attached to the owner *quâ* owner, it is clear

(e) *Hodgkinson v. Fernie* (1857), 2 C. B. N. S. 415. This statement of the law was approved by the Court.

(f) *The Ratata*, (1898) App. Cas. 513; cf. cases quoted note (x), p. 84, *infra*.

(g) *Scott v. Scott* (1817), 2 Stark. 438; but it seems that in Admiralty she would be subject to arrest.

(h) *Green v. New River Co.* (1792), 4 T. R. 589; *Blewitt v. Hill* (1810), 13 East, 13.

(i) As to this duty, see *per* Den-

man, C. J., *Mayor of Colchester v. Brooke* (1845), 7 Q. B. 339, 377; *per* Lord Stowell in *The Dundee* (1823), 1 Hag. Ad. 120; *per* Lord Blackburn in *The Voorwaerts and The Khedive* (1881), 7 App. Cas. 795, 812; and *River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, 767.

(k) But the principle has been adopted in the Harbours, Docks, and Piers Act, 1847, mentioned in the next paragraph of the text, and in some local Docks Acts.

that he could not free himself from it by contract (*l*); but, as stated above, mere ownership creates no liability for damage done by the ship (*m*).

By the Harbours, Docks, and Piers Act, 1847 (10 Vict. c. 27), s. 74, the owner of a ship which damages the harbour, dock, pier, quays, or works is answerable to the undertakers for the damage done by such ship, or by any person employed about her. This statutory liability is larger than the common law liability of the shipowner; for it exists whether the actual wrong-doer is his servant or not. The ship herself is also liable in Admiralty, and a maritime lien is, it seems, created by the statute for the amount of the damage (*n*). It has been held that, notwithstanding the words of the statute, the shipowner is not liable for injury to a pier by his ship in case of violent tempest or act of God (*o*). And the statute provides (sect. 74) that the shipowner shall not be liable where the damage was caused entirely by the fault of a compulsory pilot in charge of his ship, but from January 1st, 1918, the benefit of this exception ceased, for by sect. 15 of the Pilotage Act, 1913 (*p*), an owner of a vessel in charge of a compulsory pilot is from that date answerable for any loss or damage caused by the vessel or by the fault of the navigation of the vessel in the same manner as he would be if pilotage were not compulsory.

Owner liable by statute for damage to pier, &c., by persons other than his servants.

The liability for damage done by a ship springing, as we have seen, not from ownership, but from the rule of law by which a man is liable for the wrongful acts of his agent acting within the scope of his employment, it is evident that, on the one hand, an owner may be liable, though the relation of master and servant does not exist between him and the person who does the mischief, and, on the other hand, that the principal or employer of the wrong-doer will be liable, whether he is also owner of the ship or not. A ship worked by a partnership is an instance of the latter case.

Liability of persons other than owners;

of partners;

(*l*) *Hole v. Sittingbourne Rail. Co.* (1860), 6 H. & N. 488; per Lord Blackburn, *Dalton v. Angus* (1880), 6 App. Cas. 740, 820; *Bower v. Peate* (1876), 1 Q. B. D. 321; *Hughes v. Percival* (1882), 8 App. Cas. 443.

(*m*) *Supra*, p. 79.

(*n*) See *The Merle* (1874), 2 Asp. M. C. 402.

(*o*) *River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, overruling *The Merle*, *ubi supra*, and *Dennis v. Tovell* (1875), L. R. 8 Q. B. 10.

(*p*) 2 & 3 Geo. 5, c. 31.

Each member of the partnership is liable for the negligent acts of the other partners, and for the acts of agents of the partnership done in the course of the business of the partnership. In this case, unless the partner sued is an owner of the ship, it seems that his liability is unlimited (*q*).

In *Steel v. Lester* (*r*) the actual owner, who was also registered as managing owner (*s*), had agreed with the skipper that the vessel should be worked entirely by him, the owner having no control over her, the crew to be engaged and the voyages to be determined at the absolute discretion of the skipper. The owner was to receive one-third of the net profits earned by the ship. It was held that, whether the skipper was the owner's servant, or his partner (*t*) in the adventure, navigating ship for the joint benefit of himself and the owner, the owner's liability for the collision was the same.

of charterer.

Where the person whose negligence causes the collision is the servant or agent of a charterer of the ship, the liability for damages falls on the charterer. But, except in the rare case of an actual demise of the ship, it seldom happens that the officers and crew are in the employment of the charterer and not of the owner. When a ship is demised to a charterer, the charterer takes the benefit of the statute limiting ship-owners' liability (*u*).

A person who contracts with a shipowner for the use of his ship, with her officers and crew, for a specified time or purpose, does not thereby become liable for the negligence of those on board her. Thus, where harbour commissioners contracted with a tug-owner that his tug should tow vessels into the harbour at a specified price, it was held that they were not liable for the negligence of the crew of the tug (*x*). As between charterer and owner, the former may be liable

(*q*) See *infra*, p. 179.

(*r*) (1876), 3 C. P. D. 121.

(*s*) Under 38 & 39 Vict. c. 88.

(*t*) As to such an agreement not constituting a partnership, see *Burnard v. Aaron* (1853), 31 L. J. C. P. 334. In *Webster v. Disharoon*, 64 Fed. Rep. 143, a very similar American case, it was held that the ship was liable *in rem*, but not the owner *in personam*. See

also *The Phebe*, Ware's Reports, 263.

(*u*) See *infra*, p. 179.

(*x*) *Cuthbertson v. Parsons* (1852), 12 C. B. 304. And see the observations of Tenterden, C. J., in *Laugher v. Pointer* (1826), 6 B. & C. 547, cited by Butt, J., in *The Quickstep* (1890), 15 P. D. 196, 200; *sed* *cp.* *The Ratata*, (1898) App. Cas. 513.

for damage to the ship by the negligence of those on board, whether they are his servants or not, by reason of the obligation arising out of the contract to return the ship in the condition in which he received her, wear and tear and accidents excepted (*y*).

Thus far we have considered the liability at common law of the actual wrong-doer and of persons answerable for his acts. The injured person, we have seen, has at common law no lien upon the wrong-doing ship, but only a right of action against the person in fault, and, if he was the servant or agent of another, against his employer (*z*). We now proceed to discuss the liability in Admiralty of the ship by the negligent navigation of which the damage was occasioned. In dealing with this branch of the subject it is almost impossible to avoid personifying the ship and speaking of her as the actual wrong-doer. The habit is in some respects convenient and is inveterate, and it would be useless to struggle against it. But it must not be forgotten that in speaking of a ship as a wrong-doer or "in fault" for a collision, we are using a figure of speech which is apt to be misleading (*a*). There are, indeed, to be found in the books cases which give some countenance to the doctrine that in Admiralty the ship is the real defendant; that the ship is sued, because it is she that has done the wrong, and she that pays the recompense. But it is submitted that this view of the liability of the ship in Admiralty is not well founded, and that at the present day it would not be followed. It probably would never have been put forward but for the loose language frequently used with reference to negligence in the conduct of ships, which attributes the negligence not to the persons who navigate, but to the ships themselves. The process of Admiralty Courts against the ship seems clearly to have originated, not

Liability of
the ship in
Admiralty.

(*y*) See *Coupé Co. v. Maddick*, (1891) 2 Q. B. D. 413.

(*z*) See *per* Lord Blackburn, *River Wear Commissioners v. Adamson* (1876), 2 App. Cas. 743, 768.

(*a*) The judgment in *The Sisters*, 1 P. D. 117, is an instance of the confusion arising from the practice of personifying the ship. A collision occurred by the fault of those

on board ship A. in driving another, B., to alter her course, so as to strike and injure a third ship, C. C. sued A., and in the judgment the action is thus described:—"The suit is not brought against the actual wrongdoer, but it is brought against the vessel which caused the actual wrongdoer to do the wrong."

in any such idea as that involved in the law of deodand (*b*) or in the noxal action of the civil law, but simply as a ready and effectual means of compelling the wrong-doer to appear and defend the action, or to make recompense (*a*).

Some countenance is lent to the doctrine that the ship is liable without regard to her ownership by cases (*d*) in which the shipowner has, by seizure and sale of his vessel in Admiralty, been held liable in damages for a collision caused by the fault neither of himself nor of his servants, but of persons in charge of his ship who were not his servants. Some of these cases have been reversed on appeal; but there is at least one (*e*) modern decision of the Court of Admiralty giving effect, at the expense of the innocent owner, to the principle that it is the ship that does the wrong. Whatever ground there may be for the opinion that by the maritime law it was the ship that did the wrong (*f*), and the ship that paid the recompense, the principles of the common law have so far prevailed in Admiralty in this country, that it is at least doubtful whether at the present day, notwithstanding the case above mentioned, damages could be recovered in Admiralty against an innocent shipowner, where his liability depended only upon the supposed principle of the maritime law which fixes the fault upon the ship.

Upon this subject the language of Selwyn, L. J., in *The Halley* may here be quoted. "In cases like the present, where damages are claimed for tortious collisions, a chattel,

(*b*) In Holmes' Common Law, pp. 26 *seq.*, and an article, 10 American Law Review (p. 432), the writer suggests a connection between the liability of the ship in Admiralty and the law of deodand; and he refers to the *noxæ deditio* of the Roman law as embodying the same idea. For a curious case upon the law of deodand in connection with collision, see *Reg. v. Polwart* (1841), 1 Q. B. 818, where it was held that the jury have no power to levy deodand where the collision is by fault amounting to manslaughter, though they have where there is mere negligence: Law Magazine, vol. 3, p. 188.

(*c*) See *per* Dr. Lushington in *The Mellona* (1847), 3 W. Rob. 16;

and the judgment of Gorell Barnes, J., in *The Ripon City*, (1897) P. 226, 240.

(*d*) *The Ticonderoga* (1857), Swab. 215; *The Lemington* (1874), 2 Asp. M. C. 475, and cases *infra*, pp. 97 *seq.* The opposite views as to the position of the owner of a ship proceeded against in the Admiralty Court will be found discussed in *The Mullingar* (1872), 26 L. T. 326, and *The Parlement Belge* (1880), 5 P. D. 197, 217; *The Longford* (1889), 14 P. D. 34.

(*e*) *The Lemington* (1874), 2 Asp. M. C. 475. See this and other cases below, pp. 99 *seq.*

(*f*) Cf. *Anon.*, 1 Keb. 44, where the "misdemeanour of boat" is spoken of. Cf. *Hopton c. a pink*, Seld. Ser. Adm. ii. 79.

such as a ship or carriage, may be, and frequently is, spoken of as the wrong-doer; but it is obvious that although redress may be sometimes obtained by means of the seizure and sale of the ship or carriage, the chattel itself is only the instrument by the improper use of which the injury is inflicted by the real wrong-doer" (g).

Again, in *The Parlement Belge* (h), Brett, L. J., delivering the judgment of the Court of Appeal, said:—"In a claim made in respect of a collision the property is not treated as the delinquent *per se*. Though the ship has been in collision and has caused injury by reason of the negligence or want of skill of those in charge of her, yet she cannot be made the means of compensation if those in charge of her were not the servants of her then owner, as if she was in charge of a compulsory pilot. This is conclusive to show that the liability to compensate must be fixed not merely on the property, but also on the owner through the property."

From the expressions used in these judgments, it would appear that the liability of the ship in Admiralty, and of the owner at common law, should always be concurrent. And in *The Druid* (i), Dr. Lushington said, that the liability of the ship and the responsibility of the owner were convertible terms. But unless we are to understand "owner" to mean *pro hac vice* owner, or in some sense other than that of general owner, the dictum of Dr. Lushington is not consistent with subsequent cases. It is clear that the ship may be liable in Admiralty where no damages could be recovered at law against the general owner (k).

Before discussing further the cases in which the ship, as distinguished from her owners, is liable for collision, it will be convenient to consider the nature of the liability of the ship in Admiralty. This liability exists in the form of a lien or charge upon the ship, which arises in consequence of the collision in favour of the injured party. As a general rule, where a ship in the course of her employment

Maritime lien
for damages:
its nature.

(g) *Per Selwyn*, L. J., in *The Halley* (1868), L. R. 2 P. C. 193, 201. And see *The M. Moxham* (1876), 1 P. D. 107, 111; *Simpson v. Thompson* (1877), 3 App. Cas. 279, as to the necessity of deter-

mining who is "the actual wrong-doer."

(h) (1880), 5 P. D. 197, 218.

(i) (1842), 1 W. Rob. 391.

(k) *Infra*, pp. 97 *seq.*

for the owner's benefit, by the fault of those in charge, strikes or causes injury to (l) another ship, a charge for the amount of the loss attaches to her in favour of the sufferer. This charge or privilege, called a maritime lien, is enforced against the ship by an action *in rem* in Admiralty. But considerable doubt has been cast by historical research upon the theory that the maritime lien is the foundation of the right to arrest in an action *in rem* in Admiralty. "The ordinary mode of commencing the suit was by arrest either of the person of the defendant or of his goods. Arrest of goods was quite as frequent as arrest of the ship; and it seems to have been immaterial what the goods were, so long as they were the goods of the defendant, and were within the Admiral's jurisdiction at the time of the arrest. . . . Scarcely a trace appears of the modern doctrine of arrest being founded upon a maritime lien; the fact that goods and ships that had no connection with the cause of action, except as belonging to the defendant, were subject to arrest, points to the conclusion that arrest was mere procedure, and that its only object was to obtain security that judgment should be satisfied" (m).

The proceedings in an action *in rem* commence with a writ of summons addressed to the owners and persons interested in the ship; this, unless the defendants have by themselves or their solicitors undertaken to give bail, which is the usual course, is followed by arrest (n) of the ship by the marshal of the Court. Thereupon the ship, with her gear and tackle,

(l) See *infra*, p. 91.

(m) Select Pleas in the Court of Admiralty, published by the Selden Society, vol. 1, p. lxxi., quoted in *The Dupleix*, (1912) P. 8, 13. See also note (o) *infra*.

(n) The Valentinian Regulations, issued *circa* A.D. 1336—1343, for the guidance of the Courts of the Sea at Valencia, contain provisions as to the execution of the sentence of the Court by arrest and sale of the moveable property of the defendant, including his ships. These provisions are in some respects similar to the existing process of the Admiralty; but there is no trace in them of a lien existing before arrest.

See Black Book, Rolls' series, Vol. IV. pp. 475 *seq.* These Regulations are referred to by Mr. Justice Story in *De Lovio v. Boit*, 2 Gall. 398, as authority for the extent and character of Admiralty jurisdiction. Arrest of a defendant's property or person, to compel him to appear, *licet in jure civili nullum habet fundamentum*, was a practice which formerly extensively prevailed on the continent of Europe: Huber *Positiones juris*, ii. 4; Hub. *Prælectiones jur. civ.*, vol. 2, 88 *seq.*; and see Maine's *Early History of Institutions*, pp. 261 *seq.*

and the freight due, become security to the plaintiff for his damages and costs (o).

The privilege or right of the injured party against the ship is inchoate from the moment of collision (p), and is carried into effect by proceedings in the Admiralty Division of the High Court or other Court having Admiralty jurisdiction. It is not limited to the owner's interest in the ship (q); nor is it displaced by a sale to a *bonâ fide* purchaser without notice (r), by the owner's death (s), or bankruptcy (t), or, if the ship is owned by a company, by a winding-up order against the company (u), or by a sale under the order of a foreign Court in which the proceedings are not *in rem* (x). The lien is not barred by, or in analogy to, the Statute of Limitations (y). The injured party must, however, take proceedings to enforce his right within two years from the date when the damage or loss or injury was caused, but the

(o) Subject to the marshal's charges: *The Europa* (1864), Br. & L. 89, 210. The nature of proceedings *in rem* is fully discussed in the following cases: *The Bold Buccleuch* (1851), 7 Moo. P. C. 267; *The Aline* (1840), 1 W. Rob. 111; *The Mellona* (1849), 3 W. Rob. 16; *The Nymph* (1857), Swab. Ad. 86; *The Parlement Belge* (1880), 5 P. D. 197; *The Orient* (1871), L. R. 3 P. C. 696; *The Two Ellens* (1878), L. R. 4 P. C. 161; *The Heinrich Björn* (1886), 10 P. D. 44, at pp. 53, 54; *The Cella* (1888), 13 P. D. 82; *The Ripon City*, (1897) P. 226; *Taylor v. Carryl*, 20 How. 583. It is doubtful whether the doctrine that collision gives rise to a lien is older than *The Bold Buccleuch*. In no earlier case is the doctrine explicitly stated. In Brown's Admiralty Law, vol. 2, p. 143, it is stated that "the torts of the master cannot be supposed to hypothecate the ship, nor in my humble judgment, in strictness of speech to produce any lien on it"; even for salvage the writer thought that there is no lien: *ibid.* p. 52. From Clerke's Praxis, tit. 24, 28, it appears that arrest of the defendant's ship (or other goods) was an alternative to arrest of the defendant's person, and was merely a means of compelling appearance. The early records of the Court show that it

was not always the ship that did the damage that was arrested; any ship or goods belonging to her owner were equally liable to arrest; and also, as it seems, cargo on board the ship arrested. See next page, note (f).

(p) *The Bold Buccleuch* (1851), 7 Moo. P. C. 267.

(q) See *per* Lord Watson, *The Dumlossit*, (1897) App. Cas. 97, 106; *The Two Ellens* (1872), L. R. 4 P. C. 161.

(r) *The Bold Buccleuch* (1851), 7 Moo. P. C. 267; *The Nymph* (1857), Swab. 86; *The Mellona* (1847), 2 W. Rob. 16.

(s) See *Phillips v. Homfray* (1883), 24 Ch. D. 439, and cases there cited, as to an action at law in this case.

(t) *The Young Mechanic*, 2 Curtis, 404 (Amer. case).

(u) *In re Australian Direct Steam Navigation Co.* (1875), L. R. 20 Eq. 325; *In re Rio Grande do Sul Steamship Co.* (1877), 5 Ch. D. 282; *The Cella* (1888), 13 P. D. 82.

(x) *The Charles Amelia* (1867), L. R. 2 A. & E. 330.

(y) *The Kong Magnus*, (1891) P. 223. In America, *aliter*; *The Amboy*, 36 Fed. Rep. 925; and see *The Alaska*, 33 Fed. Rep. 107; *Withcofsky v. Wier*, 32 Fed. Rep. 301; *Scully v. Raymond*, 18 Fed. Rep. 547.

Court may extend the time, if satisfied there has not been any reasonable opportunity of arresting the vessel within two years (*z*). *The Bold Buccleuch*, which is the first reported case in which the damage lien was declared, though often questioned, has never been expressly dissented from, and has recently been approved by the House of Lords. The Admiralty law of Scotland was, in the same case, declared to be the same as that of England upon the question of the damage lien (*a*).

To what the
lien attaches.

The lien attaches to the hull of the ship, and also to her tackle, apparel, and furniture. Thus her sails and rigging (*b*), and her equipment for a fishing voyage (*c*), have been held subject to it. But it does not attach to the wearing apparel of passengers on board her (*d*). The lien exists after the ship has been wrecked and broken in pieces, and it may be enforced against the fragments (*e*).

Cargo may be
arrested to
compel pay-
ment of
freight.

Cargo on board the ship arrested forms no part of the *res* to which the lien attaches (*f*); but it is subject to arrest in order to compel the payment into Court of freight due to the shipowner (*g*); and if part has been discharged, the remainder will be released only upon payment of the whole of the freight (*h*); and when the ship is ordered to be sold, the Court will order the marshal to retain the cargo as security for the freight and charges, and, if no application be made, to sell such part as may be necessary to pay them (*i*). Such

(*z*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8. Taking out a writ *in rem* will prevent the period of limitation from running. The writ can be renewed by leave being obtained under R. S. C. Ord. VIII. r. 1, and held in readiness to serve, whenever the vessel comes within the jurisdiction.

(*a*) *The Dunlossit*, (1897) App. Cas. 97.

(*b*) *The Alexander* (1811), 1 Dods. 278.

(*c*) *The Dundee* (1823), 1 Hag. Ad. 109.

(*d*) *The William III.* (1871), L. R. 3 A. & E. 487.

(*e*) *The Neptune* (1822), 1 Hagg. 227, 238 (where the lien was for wages); *The Bold Buccleuch* (1851), 7 Moo. P. C. 267. Dist. *The Annie* (1887), 12 P. D.

50 (a case of life salvage).

(*f*) There is some evidence that formerly cargo in the wrong-doing ship was liable equally with the ship. See *Voguel c. Tomlinson* (1784), Marsd. Ad. Cas. 314; and *Bynkershoek*, Quæst. Jur. Priv. l. iv. c. 20.

(*g*) *The Victor* (1860), Lush. 72; *The Leo* (1860), Lush. 444; *Nixon v. Roberts* (1860), 1 J. & H. 739. As to arrest of cargo, where no freight is due, see *The Flora* (1866), L. R. 1 A. & E. 45. Art. 736 of the German Commercial Code provides for arrest of cargo for the same purpose.

(*h*) *The Roecliff* (1868), L. R. 2 A. & E. 363.

(*i*) *The Gettysburg* (1886), 5 Asp. M. C. 347. In that case the cargo was ordered to be kept for fourteen days before sale.

freight is part of the *res*, although the cargo in respect of which it is payable was not on board at the time of the collision, if the vessel arrested was in fact then engaged in earning it. Thus, where a ship was in collision on her outward voyage with a cargo on board for the owner's benefit, it was held that the cargo which she was then under charter to bring home from the foreign port was liable to arrest (*k*). But where the freight has been paid, and the ship was subsequently, and before arrest, sold, it was held that the new owner was not liable beyond the value of the ship (*l*).

There has been much discussion as to whether the damage lien attaches where the Admiralty Court has jurisdiction only by statute; whether in a particular case the right to proceed against a ship *in rem* under the Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), or under the Admiralty Court Act, 1861 (24 Vict. c. 10), involves a maritime lien. It is clear that where no action lies *in rem* (*m*) there can be no lien. But there may be a proceeding *in rem* where no lien exists; as in the case of an owner or consignee of cargo carried into an English or Welsh port suing the ship for damage to the goods or for breach of contract (*n*) or other proceedings against the ship authorized by one of the above statutes (*o*).

In what cases
the lien arises.

Whether or no the lien attaches to a ship that, without being in collision herself, by her negligent navigation causes a collision between two other ships (*p*), has not been expressly decided. So, with regard to collisions within the body of a county, since the High Court of Admiralty had no jurisdiction in such cases, it has been doubted whether the damage lien attached, after the extension of the Admiralty

(*k*) *The Orpheus* (1872), L. R. 3 A. & E. 308.

(*l*) *The Mellona* (1849), 3 W. Rob. 16, 25.

(*m*) E.g., for loss of life: *The Vera Cruz*, (1906) 10 App. Cas. 59; for cargo lost in a collision for which the carrying ship was alone in fault: *The Victoria* (1887), 12 P. D. 105. Proceedings for loss of life can now be brought *in rem*: Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 5.

(*n*) *The Heinrich Björn* (1886), 11 App. Cas. 276 (necessaries); *The Two Ellens* (1872), L. R. 4

P. C. 161 (mortgage).

(*o*) *The Pieve Superiore* (1874), L. R. 5 P. C. 482. In *The Patria* (1871), L. R. 3 A. & E. 436, 459, Sir R. Phillimore appears to have assumed that there was a lien. *Sed qu.*

(*p*) As in *The Sisters* (1876), 1 P. D. 117; *The Port Victoria*, (1902) P. 25; and other cases *supra*, p. 18. In America the lien has been held to arise in the case of a tug by whose fault her tow was forced into collision with a third ship: *The John G. Stevens*, 170 U. S. Rep. 113.

jurisdiction to these localities by statute. It was pointed out by Mellish, L. J., in *The Two Ellens* (q), that there are strong grounds for holding that, since collision gave a maritime lien when it occurred upon the high sea, it was intended by the Acts which extended the jurisdiction that collision should also give a lien when it occurred within a county. In a case where the collision was within the body of a county between the ship and the Liverpool landing-stage, Gorell Barnes, J., held that the lien attached (r). Probably, therefore, it attaches in all damage cases (s), whether the jurisdiction is that of the old High Court of Admiralty or statutory. That collision between ships is not a necessary condition of the lien follows from *The Veritas* (supra) and *The Zeta* (t). In the latter case the damage was to a ship by collision with a pier head; and it was contended that the case would not have been within the jurisdiction of the Admiralty before its extension by statute in 1840. Lord Herschell, C., says: "I cannot regard it as established that in the year 1840 its jurisdiction (i.e. of the High Court of Admiralty) in the case of damage received by a ship was limited to damage received by collision with another vessel. I can find no ground, either in principle or authority, for such a limitation." Conversely, damage done by a ship to objects other than ships may be sued for in Admiralty *in rem* (u), and will, it is conceived, give rise to a maritime lien (x).

(q) (1872), L. R. 4 P. C. 161, 167; and *per* Lord Halsbury, C., in *The Sara* (1888), 14 App. Cas. 209, 216. Cf. *The Zeta*, (1893) App. Cas. 468.

(r) *The Veritas*, (1901) P. 304. The learned judge doubted whether it was necessary to decide the point; but it appears to have been material; and there is an express decision "if it be material": *ibid.* p. 314.

(s) Including cases where the wrong-doing ship is not herself in collision. *The Dunlossit*, (1897) App. Cas. 97, does not contradict this.

(t) (1893) App. Cas. 468. See this case considered in *The Normandy*, (1904) P. 187. The gist of the matter seems to be tort done

by a ship. See *The Sarah* (1862), Lush. 549.

(u) In *The Swift*, (1901) P. 168, the damage was to an oyster bed; in *The Veritas*, *ubi supra*, to a landing-stage; in *The Clara Kilham* (1870), L. R. 3 A. & E. 161, and *The César*; 19 Lower Canada Jurist, 197, to a telegraph cable; in *The Excelsior* (1867), L. R. 2 A. & E. 268, to a breakwater; in *The Albert Edward* (1875), 44 L. J. Ad. 49, to a mooring dolphin; in *The Chase*, Stuart's V. Ad. Rep. 361, to a wharf. The records of the High Court of Admiralty show that suits have been entertained for collisions with a wear, a house, a wharf, a bridge, and a dredger: Selden, Ser.

(x) *The Veritas*, (1901) P. 304.

There is a question whether, in the case of a collision in a county between two non-seagoing lighters, there can be a damage lien (*y*).

The liability created by the Harbour, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), upon a ship that injures a pier or harbour works involves a maritime lien (*z*).

Injury to pier or harbour works.

If a foreign ship injures a British ship, or property of a British subject, in any part of the world, she may be detained if found within three miles of the shore of the United Kingdom (*a*). A ship which had been so detained was, after an absolute appearance by her owners in Admiralty, held liable *in rem* for injury to a barge within the body of a county (*b*).

Foreign ship detained for injury to British ship.

A plaintiff who obtains judgment in a damage action is entitled to enforce his lien to the exclusion of another damage claimant who institutes his action after judgment even on the same day (*c*). And the damage lien takes precedence of charges upon the ship arising out of contract, such as mortgages (*d*) and bottomry bonds, whether prior or subsequent to the collision in date (*e*), liens for wages, whether earned before or after the collision (*f*), liens for pilotage (*g*), salvage

Priority of damage lien.

Admiralty, ii. p. lxxxii. In the United States the Admiralty jurisdiction appears to be more limited than it now is in England. In *The Blackheath*, 195 U. S. 361, the Supreme Court held that there was jurisdiction to entertain an action for damage by a ship to a beacon which was surrounded by the sea though affixed to the ground, for the reason that this was in its nature a maritime cause of action. But in the *Cleveland R. R. v. Steamship Co.*, 208 U. S. 316, the Supreme Court explained that the above case must not be taken to extend the jurisdiction beyond the facts of that case, and that the jurisdiction did not extend to damage to structures attached to the shore, such as a pier, in other words, this was not a maritime action. See also *The Poughkeepsie*, 162 Fed. Rep. 494.

(*y*) See *Purkis v. Flower* (1874), L. R. 9 Q. B. 114; *Everard v. Kendall* (1870), L. R. 5 C. P. 248.

(*z*) *The Merle*. (1874), 2 Asp. M. C. 402. This case was overruled upon another point by *River Wear Commissioners v. Adamson*

(1877), 2 App. Cas. 743.

(*a*) 57 & 58 Vict. c. 60, s. 688.

(*b*) *The Bilbao* (1860), Lush. 149.

(*c*) *The Saracen* (1847), 6 Moo. P. C. 56; *The Desdemona* (1857), Swab. 158; and see *The Markland* (1871), L. R. 3 A. & E. 340; *The Aline Holme* (first action) (1881), 4 Asp. M. C. 593.

(*d*) See *The Chieftain* (1864), Br. & Lush. 104, 111; *The Ruby*, (1898) P. 52, as to the mortgagee's position.

(*e*) *The Aline* (1840), 1 W. Rob. 111. It has been held in America that the damage lien takes precedence of the lien for necessities supplied prior to the collision: *The John G. Stevens*, 170 U. S. Rep. 113.

(*f*) *The Benares* (1850), 7 Not. of Cas. Suppl. p. 50; *The Linda Flor* (1857), Swab. 309; *The Duna* (1861), 5 L. T. 217; *The Elin* (1883), 8 P. D. 39, 129; *The Chimara*, cited 8 P. D. 46, 131, in all which cases, however, the ship was foreign.

(*g*) *The Benares*, *supra*. *Quære*, whether any such lien exists.

liens attaching before the collision (*h*), and probably the possessory lien of a shipwright for repairs (*i*). But it ranks after the claim of a bondholder who, after the collision and before arrest, without notice of the damage lien, advances upon bottomry money which is afterwards expended in repairs—so far, at least, as such claim relates to the increased value of the ship by reason of such repairs (*k*); and it probably ranks after a salvage lien attaching after the collision (*l*).

Order of claimants in several damage actions.

Where several claimants for damages in several actions *in rem* in respect of the same collision obtain successive judgments against the ship, their respective liens are enforceable against the ship in the order of the judgments (*m*). A plaintiff who institutes his action after another has been instituted, but before judgment, is entitled to damages rateably with the plaintiff in the earlier action (*n*).

Effect of a winding-up order or bankruptcy upon the damage lien.

In the case of a ship owned by a company in liquidation the damage lien will be enforced in priority to the claims of the general creditors. If all parties are before the Court, an order will be made in the liquidation for the payment of the amount of the lien. But if parties interested in the ship, as mortgagees in possession, are not before the Court and cannot be brought before it, leave must be obtained in the winding-up to proceed in Admiralty. An arrest of the ship by the Admiralty Court after a winding-up order has been made is void, unless leave to proceed in Admiralty has been obtained in the winding-up (*o*).

(*h*) *The Veritas*, (1901) P. 304.

(*i*) Precedence is given to a salvage lien over the shipwright's lien: *The Gustaf* (1860), Lush. 506; *The Tergeste*, (1903) P. 26; but see *The Aline* (1840), 1 W. Rob. 111. The shipwright's lien is not determined by arrest of the ship in a necessities action: *The Acacia* (1881), 4 Asp. M. C. 254; and takes precedence of wages earned after the ship is in a shipwright's possession for repair: *The Tergeste*, *supra*.

(*k*) *The Aline* (1840), 1 W. Rob. 111. As to the ground of this decision, see *per* Parke, B., in *The Bold Buccleugh* (1851), 7 Moo. P. C. 267, 285. And see *The St. Olaf* (1867), L. R. 2 A. & E. 360, as to repairs without consent after arrest.

(*l*) See *The Selina* (1842), 2 Not. of Cas. 18; *Cargo ex Galam* (1864), Br. & Lush. 167; *Att.-Gen. v. Norstedt* (1816), 3 Price, 97.

(*m*) *The Saracen* (1847), 6 Moo. P. C. 56. As to a stay of proceedings in such a case to enable the defendant to limit liability, see *The Alne Holme* (first action) (1881), 4 Asp. M. C. 593. See *The Union* (1860), Lush. 128, as to this being a *lex fori*.

(*n*) *The Clara* (1854), Swab. 1.

(*o*) *In re Australian Direct Steam Navigation Co.* (1875), L. R. 20 Eq. 325; *In re Rio Grande do Sul Steamship Co.* (1877), 5 Ch. D. 282. See also *In re Traders' North Staffordshire Carrying Co.* (1875), L. R. 19 Eq. 60, as to the right, after winding-up order, to sell a barge for tolls due before

In Ireland an injunction to restrain an Admiralty action *in rem* was refused by a Court of Bankruptcy, except upon payment into Court of the amount of the claim and an undertaking being given as to costs (*p*).

A ship will be released after arrest upon money being paid into Court or bail being given to an amount sufficient to satisfy the plaintiff's claim or equal to the defendant's liability (*q*). In such a case the money in Court, or the amount of the bail, takes the place of the ship, as a security for what may be recovered in the action, and, if the bail is sufficient, the ship herself is free (*r*). It has been held that, where the amount for which bail was given was insufficient to provide for damages and costs, the ship may be re-arrested to satisfy the damages (*s*) or costs (*t*). When the owner appears in an action *in rem*, judgment goes against the owner personally, and is not limited to the value of the arrested ship (*u*). Where bail is given in an amount beyond the owner's statutory liability, the sum recoverable is, nevertheless, limited to the statutory amount (*x*). Where excessive bail is required the amount will be moderated upon an application to the Court (*y*), and in recent years the additional expense of procuring excessive bail has been ordered to be paid by the party requiring it (*z*).

Bail takes place of ship arrested.

Where after judgment in a damage action, in which bail for an insufficient amount had been given and the ship released, judgment was given against the same ship in an

Insufficient bail; further remedy against proceeds of ship.

winding-up; and see also as to enforcing a necessities lien in case of bankruptcy, *Halliday v. Harris* (1874), L. R. 9 C. P. 668.

(*p*) *In re T. C.* (1877), Ir. Rep. 11 Eq. 151. And see *The John and Mary* (1857), Swab. 471.

(*q*) As to the practice touching bail, see Williams and Bruce, Ad. Pr. 3rd ed. pp. 291 *seq.*

(*r*) As to security to answer a counterclaim where the defendant's ship is not arrested, see *The Alne Holme* (second action) (1881), 4 Asp. M. C. 591; 24 Vict. c. 10, s. 34.

(*s*) *The Dictator*, (1892) P. 304, where the following cases were considered: *The Kalamazoo* (1851), 15 Jur. 885; *The Volant* (1842), 1 W. Rob. 383; *The Temiscouata* (1844), 2 Sp. 208; *The Falk*, *infra*, p. 96 (*a*). *The Dictator* was fol-

lowed in *The Gemma*, (1899) P. 285.

(*t*) *The Freedom* (1870), L. R. 3 A. & E. 495; and see *The Flora* (1866), L. R. 1 A. & E. 45.

(*u*) *The Dupleix*, (1912) P. 8; following *The Dictator*; (1892) P. 304; *The Gemma*, (1899) P. 285.

(*x*) *The Duchesse de Brabant* (1856), Swab. 284; *The Chieftain* (1864), Br. & L. 104; *The Staffordshire* (1872), L. R. 4 P. C. 194.

(*y*) *Owen v. The Providence*, Ad. Ct. 1766; Marsden's Ad. Ca. 13. See also *The Chieftain* (1864), Br. & L. 104; *The Victor* (1860), Lush. 72.

(*z*) *The Princess Marie José* (1913), 12 Asp. M. C. 360. As to commission on procuring bail, see *infra*, Chapter XIII.

action for necessities, and the ship was sold in the necessities action and the money paid into Court, it was held that the plaintiffs in the damage action could not be paid out of the proceeds of the sale of the ship to the prejudice of the claimants in the necessities action (a).

Assignment of lien.

The assignee of a right to proceed *in rem* for repairs is entitled to enforce his right against the ship, notwithstanding a composition deed executed by the assignor after the arrest of the ship; and although at the date of the assignment the ship was not under arrest, and the right of the assignor was inchoate only (b). It seems that the right of an assignee of a lien for damage would be the same.

Discharge of the lien.

The lien for damage which attaches at the instant of collision (c) adheres to the ship until it is discharged by being satisfied, by laches (d) or in any other way in which by law it may be discharged (e). It seems that it may be enforced after the death or bankruptcy of the wrong-doer, or of the person liable at law for the acts of the wrong-doer, and formerly, in the absence of laches, it was not barred by the Statute of Limitations or by lapse of time (f); but now by the Maritime Conventions Act, 1911 (g), no action is maintainable to enforce a lien in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injury, unless proceedings are commenced within two years from the date when the damage, loss, or injury was caused.

From the above statement as to the nature of the mari-

(a) *The Falk* (1881), 4 Asp. M. C. 592.

(b) *The Wasp* (1866), L. R. 1 A. & E. 367. The principle of this decision does not appear to be affected by *The Heinrich Björn* (1884), 11 App. Cas. 270. As to assignment of the lien, see *The Merle* (1874), 2 Asp. M. C. 402; *The New Eagle* (1846), 4 Not. of Cas. 426; *The Janet Wilson* (1857), Swab. 261; *The Louisa* (1848), 6 Not. of Cas. 531.

(c) *The Bold Buccleugh* (1851), 7 Moo. P. C. 267; *The Mary Ann* (1866), L. R. 1 A. & E. 8, 11.

(d) See per Mellish, L. J., *The Two Ellens* (1872), L. R. 4 P. C. 161, 169.

(e) It is discharged by sale of the *res* under process of the Court:

The Saracen (1847), 2 W. Rob. 451; by payment and acceptance of the amount of the claim: *The William Money* (1827), 2 Hag. 136. As to whether acceptance of bail, where the amount of bail is insufficient to recompense the sufferer, discharges the lien, *The Kalamazoo* (1851), 15 Jur. 885, and *The Dictator*, (1892) P. 304, seem in conflict. *The Dictator* was approved in *The Gemma*, (1899) P. 285.

(f) See per Mellish, L. J. (1873), L. R. 4 P. C. 170; *The Kong Magnus*, (1891) P. 223; 7 Asp. M. C. 64.

(g) 1 & 2 Geo. 5, c. 57, s. 8. The time may be extended by the Court: *ibid.*

time lien for damages, it will be seen that proceedings against the ship in Admiralty provide the sufferer by collision with a remedy in many cases where he would otherwise be without redress; as where the owners of the wrongdoing ship are resident abroad, dead, or bankrupt, or for other reasons cannot be sued personally.

The question referred to above, namely, whether the ship may be liable in proceedings *in rem* where the collision is not caused by the fault of the owner or his agents, and where, consequently, he could not be made liable at law, has arisen in several cases. In *The Druid* (*h*), Dr. Lushington said, that the liability of the ship and the responsibility of the owner were convertible terms. And in some later cases the liability of the ship and the responsibility of the owners have been spoken of by the Privy Council as if they were always concurrent (*i*). In a case before the Court of Appeal it was expressly said that "the liability to compensate must be fixed not merely on the property but on the owner through the property" (*k*). On the other hand there are decisions in Admiralty holding the ship liable where the owner could not be sued at law (*l*).

Whether the ship may be liable where the owner is not.

Thus where a yacht was placed by her owners in the hands of an agent for sale, and whilst in his possession, and owing to his negligence in not striking her top gear, she drove from her moorings and injured another ship, it was held that the yacht was liable. The proceedings being *in rem*, Dr. Lushington said that the common law doctrine as to the non-liability of her owner for the negligence of an

Ship in hands of agent for sale.

(*h*) (1842), 1 W. Rob. 391. It appears from *The Tasmania* (1888), 13 P. D. 110, 116, that in the opinion of Sir J. Hannen, by "owners" Dr. Lushington meant to include charterers.

(*i*) *The Diana, Stuart v. Isomonger* (1841), 4 Moo. P. C. 11, 19; *The Amalia* (1863), 1 Moo. P. C. N. S. 471, 484; *The Halley* (1868), L. R. 2 P. C. 193; *The Orient* (1870), 3 P. C. 696, 703; *The M. Mozham* (1876), 1 P. D. 107.

(*k*) *Per Brett, L. J., The Parle-*

M.

ment Belge (1880), 5 P. D. 197, 218.

(*l*) Besides the cases mentioned below, it was so held in *The Neptune the Second* (1811), 1 Dods. Ad. 467; and *The Girolamo* (1833), 3 Hag. Ad. 169, where the vessel was condemned for the fault of a compulsory pilot. These decisions were, however, not followed in subsequent cases: see *The Protector* (1840), 1 W. Rob. 45; *The Maria*, *ibid.* 95. Cf. *The Longford* (1889), 14 P. D. 34; *The Ripon City*, (1897) P. 226.

independent contractor had no application (*m*). At common law the owner would not be liable in such a case (*n*).

In *The Dunlossit* (*o*) the crew of a ship moored between two others, for their own safety and to escape probable damage in bad weather, cut the moorings of a ship alongside in order to escape to sea. It was held by the House of Lords that, assuming the act to be wrongful, the ship was not thereby subjected to a maritime lien. So in *The Utopia* (*p*) the Privy Council held that a sunken wreck, which by the fault of the harbour authority, and not of her owners, was unlit, and damaged a vessel that struck on it, was not subject to a maritime lien or liable *in rem*. Referring to the opinion of Lord Watson as to the character of the damage lien expressed in *The Castlegate* (*q*), Sir F. Jeune, delivering the judgment of the Privy Council, said (*r*): "The foundation of the lien is the negligence of the owners or their servants at the time of the collision, and if that be not proved, no lien comes into existence, and the ship is no more liable than any other property which the owners at the time of the collision may have possessed."

Ships under
charter.

Where a vessel was chartered to the French Government, and whilst in tow of a steamship, which the charterers ordered her to employ, by the fault of the steamship, went foul of a third vessel, Dr. Lushington held that, the proceedings being *in rem*, the maritime lien for damage attached, notwithstanding any prior contract between the owner and a third party. "It is impossible," he said, "that because a person has entered into a voluntary contract by which he is finally led into mischief, that that can relieve him from making good the mischief which he has done." And he said that this was the case though the ship has been demised by the owner to another who has the appointment of the master and crew (*s*).

(*m*) *The Ruby Quen* (1860), Lush. 266; *The Orient* (1870), L. R. 3 P. C. 696; followed in *Baker v. Power*, 14 Fed. Rep. 483, where a ship under repair on a shipwright's slip broke away and injured another afloat.

(*n*) See *per* Lord Blackburn, *River Wear Commissioners v. Adamson* (1876), 2 App. Cas. 743,

768; *Eglinton v. Norman* (1877), 46 L. J. Ex. 557 (overruled on another point by *The Crystal*, (1894) App. Cas. 508).

(*o*) (1897) App. Cas. 97.

(*p*) (1893) App. Cas. 492.

(*q*) (1893) App. Cas. 38, 52.

(*r*) (1893) App. Cas. 499.

(*s*) *The Ticonderoga* (1857), Swab. Ad. 215. "There is nothing

The case here anticipated by Dr. Lushington afterwards came before Sir R. Phillimore, and was decided in accordance with the above opinion of Dr. Lushington. In *The Lemington* (t) the vessel was chartered by her owners to a person upon terms by which the charterer had the sole and absolute management of her and the appointment of her crew. The charterer was to pay all expenses connected with the ship, and her owners were to receive one-fifth of her gross earnings. It was held that the ship was liable in proceedings *in rem*. Sir R. Phillimore said:—

“A vessel placed by its real owners wholly in the control of charterers or hirers, and employed by the latter for the lawful purposes of the hiring, is held by the charterers as *pro hac vice* owners. Damage wrongfully done by the *res* while in possession of the charterers is therefore damage done by the owners or their servants, although those owners may be only temporary. Vessels suffering damage from a chartered ship are entitled, *primâ facie*, to a maritime lien upon that ship, and look to the *res* as a security to the restitution. I cannot see how the owners of the *res* can take away that security by having temporarily transferred the possession to third parties. A maritime lien attaches to a ship for damage done through the negligence of those in charge of her, in whosoever possession she may be, if that damage is inflicted by her whilst in the course of her ordinary and lawful employment, authorized by her owners. Whether the damage is done through the default of the servants of the actual owners, or of the servants of the chartered owners, the *res* is equally responsible, provided that the servant making default is not acting unlawfully or out of the scope of his authority” (u).

in this judgment which leads to the conclusion that Dr. Lushington intended to retract what he said in *The Druid*:” per Sir J. Hannen, *The Tasmania* (1888), 13 P. D. 110, 117. See also a dictum of Dr. Lushington in *The Mellona*, 3 W. Rob. 16, 21, as to the liability of the ship without regard to the question whether the owners, at the date of the arrest, were the owners at the date of the collision.

(t) (1874), 2 Asp. M. C. 475.

(u) The charterer of a ship in the

situation of *The Lemington*, *supra*, is held to be entitled to owner's salvage reward: *The Scout* (1871), L. R. 3 A. & E. 512; but the actual owner is entitled to owner's salvage where, notwithstanding the charter, the ship remains in his or his agent's possession: *The Collier* (1866), L. R. 1 A. & E. 83; *The Waterloo* (1817), 2 Dods. Adm. 433. In France it seems that a ship in the position of *The Lemington* is liable to the sufferer by collision as “*garantie speciale*”:

The liability of the owner in this case has been compared to that of the holder of a bottomry bond executed before a collision for which the ship is in fault. In such a case the damage lien takes precedence of the bottomry lien. The bondholder is, "so to speak, a part owner in interest at the date of the collision, and the ship in which he and others are interested is liable to its value at that date (of the collision) without reference to his claim" (x).

The Tasmania. The liability of the ship, as distinguished from that of the owner, was discussed in *The Tasmania* (y). The conclusion arrived at in that case by Sir James Hannen was, that the damage lien is not absolute; that it does not arise upon the mere fact of collision through the negligence of those on board; that it arises only where "the navigators can be identified with the owners or their agents;" and that by the maritime law, "charterers to whom the government of the ship is voluntarily handed over, represent the owners so as to bind the ship." There is, he said, a *primâ facie* liability of the ship, which may be rebutted by showing that the injury was done by the act of someone navigating the ship not deriving his authority from the owners; and by the maritime law, charterers in whom the control of the ship has been vested by the owners are deemed to have derived their authority from the owners so as to make the ship liable for the negligence of the charterers who are *pro hac vice* owners. From these premises he drew the conclusion, that whatever is a good defence for the charterers against the claim of the injured person is a good defence for the ship, as it would have been if the same defence had arisen between the owners and the injured person.

The facts of the case to which Sir James Hannen applied these principles were these:—The plaintiff, the owner of the smack *Striver*, sued the tug *Tasmania*, *in rem*, for sinking the smack whilst towing her into Yarmouth harbour. The collision was caused entirely by the fault of the master of the

Manuel de Droit Commercial, par P. Bravard Veyrières, 7th ed. par Ch. Demangeat, p. 343; and in America the wrong-doing ship is liable, without regard to her ownership, except in the case of a ship in tow; *The Arturo*, 6 Fed. Rep. 308.

(x) *Per Jervis, C. J., The Bold Buccleuch* (1851), 7 Moo. P. C. 267, 285. Cf. the liability of the ship for wages of a crew not employed by her owner, *Wells v. Osman* (1703), 2 Ld. Raym. 1044.

(y) (1888), 13 P. D. 110.

tug. *The Tasmania* was owned by one Watkins, and she was chartered by the Great Yarmouth Steam Tug Company at 30*l.* per week, the charterers finding a captain and the owners the crew. The plaintiff, who was a director of the Tug Company, had been in the habit of employing the company's tugs to tow his smacks upon terms published by the company, one of which was that the company were not to be liable for damage to smacks when in tow of their tugs. It was held that the plaintiff employed *The Tasmania* upon the terms published by the company with reference to their own tugs; that in contracts made upon the published terms there was necessarily implied an agreement that the tug should not be liable *in rem*: and that consequently *The Tasmania* was not liable *in rem*, no damage lien having arisen.

Having regard to the above decisions, it seems that, notwithstanding *dicta* to the contrary, a person injured by a collision can in some cases recover against the owner of the ship that has done the damage by proceedings in Admiralty *in rem* where he could not recover at common law. But the exact liability of the ship, apart from the question of ownership, cannot yet be considered as settled.

In America, the liability of the ship, as distinguished from the personal liability of the owner, has been carried further than it has ever been carried by the Courts of this country. In a case before the Supreme Court (2), Story, J., quoted with approval the following passages from a judgment of Marshall, C. J.:—"This is not a proceeding against the owner; it is a proceeding against the vessel for an offence committed by the vessel." And again, he says:—"The thing is here primarily considered as the offender, or rather the offence is primarily attached to the thing." So Brown, J., in the Supreme Court:—"The ship itself is to be treated in some sense as a principal, and as personally liable for the negligence of anyone who is lawfully in possession of her, whether as owner or charterer" (a). This, it will be observed, is not the view taken by the Courts of this country (b).

The liability of the ship (as distinguished from the owner) in American law.

(2) *The Malek Adhel*, 2 How. 210, 234.

(a) *The Barnstable*, 181 U. S. Rep. 464, 467.

(b) In America the ship is liable for the master's contracts in cases where she would not be liable by English law. Upon the question

Ship affected by the fault of persons for which the owner is not answerable.

An instance of the ship being affected by the fault of those on board, for which her owners were not liable at law, occurred where a collision was caused by the fault of both ships, and the fault of one of them was the fault of her compulsory pilot. In this case her owners could recover half, but only half, their loss against the other ship and her owners (c); and that only subject to the rule, usual in such cases, of having to bear their own costs (d). The fault of the pilot affected the ship to this extent—that it brought into operation the rule as to division of loss; but it would seem not to be contributory negligence such as would affect the owners at law (e). Since January 1st, 1918, the owner of a vessel navigated by a compulsory pilot is answerable for any loss or damage caused by the vessel in the same manner as he would be if the pilotage were not compulsory (f).

By the maritime law ship and owners liable for negligent navigation.

By the maritime law, as administered in the Admiralty of this country, the owners of a ship that negligently damages another on the high seas are liable for the negligence of their servants on board such ship, and the damage lien attaches to the ship. Thus Lord Stowell, in *The Dundee* (g), said that “negligent navigation causing damage to another ship the maritime law considers as a dereliction of bounden duty, entitling the sufferer to reparation in damages. . . . The ancient general law exacted a full compensation out of all the property of the owners of the guilty ship, upon the common principle applying to persons undertaking the conveyance of goods (h), that they were answerable for the conduct of the persons whom they employed, and of whom the other parties who suffered damage knew nothing, and

whether the owners of a chartered ship are liable in proceedings in rem for “torts committed by the ship,” the Supreme Court was equally divided in *Thorpe v. Hammond*, 12 Wall. 408. See also *The Clarita* and *The Clara*, 23 Wall. 1; *The Barnstable*, *supra*; *Workman v. Mayor, &c. of New York*, 179 U. S. Rep. 552.

(c) *The Hector* (1883), 8 P. D. 218.

(d) *The Hector* (1883), 8 P. D. 218; *The Rigbords Minde* (1883), 8 P. D. 132.

(e) See *Spaight v. Tedcastle*

(1881), 6 App. Cas. 217; *The Adam W. Spies* (1901), 70 L. J. Ad. 25.

(f) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 15.

(g) (1823), 1 Hag. 109, 120.

(h) “I should rather say undertaking the management of anything likely to do mischief, unless attention and vigilance is used by those who manage it:” *per* Lord Blackburn, *Stoomvaart Maatschappij Nederland v. P. & O. Steam Navigation Co.* (1882), 7 App. Cas. 795, 812.

over whom they had no control. To this rule our own country conformed" (i). It is the maritime law, and not the law of the flag, that governs in such a case. Thus, where the owners of a cargo on board a ship sailing under the Dutch flag sued the owners of another Dutch ship for loss of cargo in a collision on the high seas caused by the fault of the latter ship, it was held that the Dutch law (by which, it was alleged, the owners of the wrong-doing ship were not liable) was not applicable to the case (k).

Owners are not liable for damage caused by a ship which they have abandoned, if the abandonment was justifiable. But if the abandonment, though necessary for the safety of those on board, was the result of negligence for which the owner is responsible, it seems that he remains liable notwithstanding the abandonment (l). So long as a ship remains in the owner's possession he is liable for damage to another ship striking her, though she is sunk or ashore, if such damage was caused by the absence of proper lights or precautions on his part.

Liability for damage by a ship ashore, sunk, or abandoned.

It has been held to be the duty of those in charge of a vessel sunk in a fairway to mark her position with a buoy or in some other way (m), and if in a tideway with a buoy that will watch (n). But if the owner or person in possession of the wreck proves that the wreck, though unmarked and unlit, was so through no negligence on his part, he is not liable. Thus, in *The Douglas* (o), it being proved that notice of the wreck had been given to the river authority having power to

(i) See also *The Ticonderoga* (1857), Swab. 215; *The Mellona* (1849), 3 W. Rob. 16, 21; *The Leon* (1881), 6 P. D. 148.

(k) *Chartered Mercantile Bank of India, London, and China v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521.

(l) *Brown v. Mallet* (1848), 5 C. B. 599; *White v. Crisp* (1875), 10 Ex. 312. These cases were decided on demurrer, and some doubt was thrown upon them in *The Douglas* (1882), 7 P. D. 151. See also *Rez v. Watts* (1798), 2 Esp. 675; *White v. Phillips* (1863), 15 C. B. N. S. 245; *Dimes v. Petley* (1885), 15 Q. B. 276. As to the non-liability of the owner of a sunken ship after abandonment,

for expenses of removing her, see *The Crystal*, (1894) App. Cas. 508, overruling *Eglington v. Norman* (1877), 46 L. J. Ex. 557. *Smith v. Wilson* (1895), 8 Asp. M. C. 197, is a decision upon a colonial Act upon the same subject.

(m) *Harmond v. Pearson* (1808), 1 Camp. 515; *Hancock v. York, &c. Rail. Co.* (1850), 10 C. B. 348; *Gilbert v. Corporation of Trinity House* (1886), 17 Q. B. D. 795 (damage by stump of beacon); *The H. S. Nichols*, 53 Fed. Rep. 665.

(n) See *Jolliffe v. Wallasey Local Board* (1874), L. R. 9 C. P. 62.

(o) (1882), 7 P. D. 151.

remove wrecks, it was held that the owner was not liable for a collision caused by the wreck being unlit. In such cases the owners of the wreck can, without abandoning their property in the wreck, relieve themselves of the duty to light and mark the wreck by giving notice to those upon whom that duty is cast by the law; or to the local authority assuming or apparently having power to deal with the wreck (*p*). In America it has been held that there is no duty upon a tug to mark a barge that sank whilst in tow (*q*).

The law upon this subject was thus stated by the Privy Council (*r*): "The result of these authorities (*Brown v. Mallet*, *White v. Crisp*, *The Douglas*) may thus be expressed. The owner of a ship sunk, whether by his default or not (wilful misconduct probably giving rise to different considerations), has not, if he abandon the possession and control of her, any responsibility either to remove her or to protect other vessels from coming into collision with her (*s*). It is equally true that so long as, and so far as, possession, management, and control of the wreck be not abandoned or properly transferred, there remains on the owners an obligation as regards the protection of other vessels from receiving injury from her. But in order to fix the owners of a wreck with liability, two things must be shown: first, that in regard to the practical matters in respect of which default is alleged, the control of the vessel is in them, that is to say, has not been abandoned, or legitimately transferred; and, secondly, that they have in the discharge of their legal duty been guilty of wilful misconduct or neglect."

If the owner of a sunken wreck does not abandon her, and employs an "independent contractor" to raise her, he does not thereby escape the obligation of seeing that she is properly lit. The principle, which is the same on water as on land, is that where a person employs a contractor to do work in a place where the public are in the habit of passing, which

(*p*) *The Utopia*, (1893) App. Cas. 502.

(*q*) *Worth v. Steam Tug William Murtagh*, 6 Fed. Rep. 192. Cf. *The Swan*, 3 Blatchf. 285.

(*r*) *The Utopia*, (1893) App. Cas.

492, 498; followed in *The Snark*, (1900) P. 105.

(*s*) Cf. *Ball v. Berwind*, 29 Fed. Rep. 541, where the owners were under obligation to raise the wreck, although abandoned.

work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken (*t*).

Before the days of floating docks, damage to ships by grounding upon unbuoyed anchors in the Thames and elsewhere was a very frequent cause of action (*u*). The ship whose anchor was unbuoyed was invariably found in fault; and "ordinances" of the Admiralty—which appear to have been presentments of juries at Admiralty sessions—were issued against leaving anchors unbuoyed. In an American case (*x*), it was held that in ordinary anchorage ground it is not necessary to buoy the anchor.

Damage by unbuoyed anchor.

The duty of a ship under way to avoid doing damage to a sunken ship, or to a ship ashore, is the same as in the case of a ship at anchor. But unless the masts (*y*) or some part of the wreck is above water, and, at night, properly lit, or the ship under way is in some way warned of the presence of the wreck, no presumption of fault would, it is conceived, arise against the ship under way.

Damage to a sunken ship.

The principle which exempted a ship and her owners from liability where the damage results entirely from the negligence of a compulsory pilot in charge of her, applies equally where the ship is being navigated under the orders of a dock or harbour master empowered by the Legislature to direct the movements of vessels within his dock or harbour (*a*). In such cases the dock or harbour master is liable; and the dock or harbour authority would, it seems, also be liable (*b*). The liability would be the same, whether the dock or harbour authority was a corporation or body trading for profit, or whether it merely had power to levy tolls and apply them

Liability of dock or harbour authority.

(*t*) *Per* Bruce, J., *Penny v. Wimbledon Urban Council*, (1898) 2 Q. B. 212, cited by Smith, L. J., in *The Snark*, (1900) P. 105, 110.
(*u*) *Tills v. The Mary* (1703), Marsd. Ad. Cas. 284, is an instance.

(*x*) *Baxter v. International Contracting Co.*, 65 Fed. Rep. 250.

(*y*) As in *The Edwin Hawley*, 41 Fed. Rep. 606.

(*a*) See *The Cynthia* (1877), 2 P. D. 52; *The Mystery*, (1902) P. 115; *The Excelsior* (1867),

L. R. 2 A. & E. 268. *Of. Edwards, Robertson & Co. v. Falmouth Harbour Commissioners, The Rhosina* (1885), 10 P. D. 24, 131; *Reney v. Magistrates of Kirkcudbright* (1892), 7 Asp. M. C. 221.

(*b*) But with a right to limit their liability in certain cases by the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32), *infra*, p. 180.

towards the maintenance and improvement of the dock or harbour (*c*). Thus, for a collision in a dock caused by the improper influx or withdrawal of water, improper berthing of ships, or negligence of a dock master in regulating the movements of a vessel in the dock, damages might, it seems, be recovered against the proprietors or trustees of the dock (*c*).

Omission by
harbour
authority to
remove wreck.

Whether harbour and lighthouse authorities, having power to remove vessels sunk in harbours or waters within their jurisdiction, are liable for injury sustained by a vessel striking against a wreck which they have neglected to remove, depends on the extent of the obligations imposed by the statutes under which they act; if they have a duty to keep fairways clear of obstructions and neglect that duty, they are liable for resulting damage (*e*). The powers given by the Removal of Wrecks Act, 1877, now repealed but re-enacted in the Merchant Shipping Act, 1894, and by the Harbour, Docks and Piers Clauses Act, 1847, would seem not to impose a duty to remove wrecks (*f*).

Questions as to the liability for the expense of removing sunken wrecks have arisen in recent cases (*g*); in each case the matter mainly depended upon the construction of statutes.

Duty of
wharfinger
as to ships
using wharf.

The duty of harbour authorities and wharfingers to take reasonable care to see that a berth to which a vessel comes is in a proper condition has been the subject of several modern cases. Thus in *The Moorcock* (*h*) the duty of a wharfinger was held to extend to warning ships using his wharf of the uneven character of the river bed alongside his wharf. In this case the river bed was not in the wharfinger's possession or under his control. In *The Bearn* (*i*) trustees of a harbour

(*c*) See *Mersey Docks and Harbour Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; *The Excelsior* (1867), L. R. 2 A. & E. 268, 270. *Aliter* (semble) in the case of unpaid trustees of a dock or navigation having no power to levy tolls: *Forbes v. Lea Conservancy Board* (1879), 4 Ex. D. 116.

(*e*) *Dormont v. Furness Rail. Co.* (1883), 11 Q. B. D. 496. Cf. *The Douglas* (1882), 7 P. D. 151.

(*f*) 40 & 41 Vict. c. 16; 57 & 58 Vict. c. 60, ss. 530 to 534; 10 & 11 Vict. c. 27, s. 56. *Dor-*

mount v. Furness Rail. Co. (1883), 11 Q. B. D. 496.

(*g*) *The Crystal*, (1894) App. Cas. 508 (The Harbour, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), and the Removal of Wrecks Act, 1877 (40 & 41 Vict. c. 16)); *Howard Smith v. Wilson*, (1896) App. Cas. 579 (a colonial Act); *Barraclough v. Brown*, (1897) App. Cas. 615.

(*h*) (1888), 13 P. D. 157; 14 P. D. 64.

(*i*) (1906) P. 48. Cf. *The Caliope*, (1891) App. Cas. 11. Cf.

were held liable for not taking reasonable care to ascertain that the berth was in a proper condition.

In *The Queen v. Williams* (k) the executive government of a colony was held liable for injury caused to a ship which lay at a wharf of which they were possessed, and for the use of which they were paid by the shipowner. The injury was done by a snag under water, of the existence of which the harbour authority, the government, were aware, but of which they gave no warning to the ship. The decision in this case followed those in *Parnaby v. Lancaster Canal Co.* (l), and *Mersey Docks and Harbour Board v. Gibbs* (m).

A steamship lying in Falmouth harbour had occasion to be placed on shore to have her propeller examined. The harbour master, at the request of her owner or master, went on board and gave orders as to getting her under way with a view to beaching her. By his order the anchor was let go in an improper manner, so that the vessel grounded on it and was injured. The owners sued the harbour master and the harbour authorities as his employers. Bye-laws in the usual form, made under the powers of the local Act and the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), empowered the harbour master to regulate the movements of vessels in the harbour, and required vessels to obey his directions. It was held that the harbour master was acting in his capacity of harbour master when he gave the order to let go the anchor; that the order was a grossly wrong and negligent order; and that both he and his employers, the harbour authorities, were liable for the negligence (n).

In *The Apollo* (o), the foreman docksmen, in the absence of the harbour master, gave permission, at the request of the ship's agent, to put the ship on the bottom of a lock leading into the harbour, for the purpose of freeing her propeller, which had fouled a rope. The ship was damaged through

Wright v. Lethbridge (1889), 6 Asp. M. C. 558. Cf. *The Burlington* (1895), 8 Asp. M. C. 38. (k) (1884), 9 App. Cas. 418; *The John A. Berkman*, 6 Fed. Rep. 535. See also *Parnaby v. Lancaster Canal Co.* (1840), 11 A. & E. 223, as to the common law liability of a canal company for damage by sunken craft.

(l) (1840), 11 Ad. & El. 223. (m) (1866), L. R. 1 H. of L. 93, followed in *Bede Steamship Co. v. River Wear Commissioners*, (1907) 1 K. B. 310. (n) *The Rhosina, Edwards, Robertson & Co. v. Falmouth Harbour Commissioners* (1885), 10 P. D. 131. (o) (1891) App. Cas. 499.

Liability of harbour authority for damage by harbour master.

sitting upon an old dock-sill, the existence of which was unknown to the foreman docksman, and the shipowners sued the dock company for damages. It was held by the House of Lords, with some difference of opinion, and after conflicting decisions in the Courts below, that the foreman docksman was discharging the duties of the harbour master, and that it was within his duty to authorize the use of the lock for grounding the ship, and that he ought to have told the master of the ship that it was not fit for the purpose. Consequently the dock company were held liable.

In *Reney v. Magistrates of Kirkcudbright* (p), the harbour master ordered a ship to enter the harbour on an ebb tide. In doing this she grounded, and was damaged. Two fishermen, who had been taken on board to assist in bringing the ship into harbour, were aware of the risk of grounding, but made no protest. It was held by the House of Lords that, notwithstanding the presence on board of the fishermen and their knowledge of the risk, the harbour master's order was alone the cause of the damage, and that the harbour authority was liable.

Liability of
harbour au-
thority for
insufficient
moorings.

There is no reported decision as to the liability of a port or harbour authority for a collision caused by the insufficiency or parting of moorings laid down by them for the use of ships. The owner of the ship which goes adrift would not, it seems, be liable in such a case (q), and upon proof of negligence it would probably be held that damages could be recovered against the port authority.

Action
against port
authority:
time limit.

An action *in personam* against a harbour, port, or dock authority must be commenced within six months of the act complained of (r).

Pilotage
authorities
not liable for
negligence of
licensed pilot.

It has been attempted, but without success, to make a pilotage authority liable for the negligence of a pilot licensed but not employed by them (s). And in a recent case,

(p) (1892) App. Cas. 264.

(q) *The Toward* and *The Turkistan* (1885), 13 Ct. of Sess. Cas. 4th ser. 342, where a ship fast to one of the Clyde Trustees' buoys was held not in fault for its carrying away. See also *The William Lindsay* (1873), L. R. 5 P. C. 338; *The Ambassador* (1877), cited 2

P. D. 37; *The Monkseaton* (1889), 14 P. D. 51; *The Ratata*, (1898) App. Cas. 513.

(r) *The Public Authorities Protection Act*, 1893 (56 & 57 Vict. c. 61); *The Ydun*, (1899) P. 236; *The Johannesburg*, (1907), P. 65. *Aliter in rem*, see p. 277.

(s) *Dudman v. Brown and*

where the deputy harbour master of the defendants was also a pilot licensed by them, and was employed by the plaintiffs to pilot their ship, which was lost by his negligence, the defendants were held free from liability on the ground that, though it was their duty to license pilots, they were not authorized by their statutes to enter into pilotage contracts, or to employ a person as pilot for a particular vessel (*t*). But in another case in Scotland, where the loss was caused by the fault of a boatman, not licensed as a pilot, employed by the harbour trustees to conduct a ship, the trustees were held liable (*u*). In some cases the Act of Parliament constituting the pilotage authority expressly provides that it shall not be liable for damage caused by negligence of pilots licensed by them (*x*).

In the case of damage done by a King's ship, the legal responsibility attaches to the actual wrong-doer alone (*y*). If the ship is properly in charge of an inferior officer, the captain is not liable in a civil action (*z*); nor is a pilot liable for a wrong order given by the officer in command (*a*). The appointment of all officers being with the Government, the superior officer is not answerable for the acts of his subordinates.

His Majesty's ships and public ships of foreign states are not subject to arrest (*b*). Foreign Governments frequently submit themselves to the jurisdiction of the Admiralty Court,

Liability in case of a collision with one of H.M. ships.

Dublin Port and Docks Board (1873), Ir. Rep. 7 C. L. 518.

(*t*) *Shaw, Savill & Albion Co. v. Timaru Harbour Board* (1889), 15 App. Cas. 429. The question was raised, but not decided, in *Parker v. North British Rail. Co.* (1898), 25 Ct. of Sess. Cas. 4th ser. 1059.

(*u*) *Holman v. Irvine Harbour Trustees* (1877), 4 Ct. of Sess. Cas. 4th ser. 406 (Rettie).

(*x*) *E.g.*, 25 Vict. c. 29 (local), s. 43 (Brean Down); 25 Vict. c. 31 (local), s. 65 (Berwick-upon-Tweed).

(*y*) *The Mentor* (1799), 1 C. Rob. 179; *The Athol* (1842), 1 W. Rob. 374; *The Volcano* (1844), 2 W. Rob. 337; *The Birkenhead* (1849), 3 W. Rob. 75; *The Belleophon* (1876), 3 Asp. M. C. 58;

The Sans Pareil, (1900) P. 267; *The Hero*, (1911) P. 128; (1912) App. Cas. 300; *The Olympic* and *H.M.S. Hawke*, (1913) P. 214; *H.M.S. King Alfred*, (1914) P. 84, are instances of actions against King's ships.

(*z*) *Nicholson v. Mouncey* (1812), 15 East, 384. See *The Cybele* (1878), 3 P. D. 8; *Wright v. Lethbridge* (1889), 6 Asp. M. C. 558 (an action against a Queen's harbour master).

(*a*) *Stort v. Clements* (1792), 1 Peake, 107.

(*b*) *The Athol* (1840), 1 W. Rob. 374; *The Conus* (1816), 2 Dods. 464. In America, Government ships are subject to Admiralty process: *The Siren*, 7 Wall. 152; *The Fidelity*, 16 Blatch. 569.

and upon so doing they subject themselves to the ordinary rules of law (*d*).

The liability to arrest of vessels belonging to a civil department of the Government, and employed for the special purposes of the department, and of privately owned vessels in the employ of Governments, British or foreign, under requisition or on charter, is considered below, pp. 230, 280.

Liability of owners of cargo.

Owners of cargo on board a ship in fault for a collision are not liable for the damage done by the ship; but the cargo may be arrested in order to secure for the benefit of the sufferers in the collision the payment of freight due to the shipowner (*e*).

Shipowner liable, though ship lost.

The shipowner is not discharged from his liability by the sinking of his ship (*f*), though in such a case no action *in rem* can be brought.

Liability of part owners and joint wrong-doers.

Part owners of a ship in fault for a collision are at law severally liable as joint wrong-doers, or joint employers of the actual wrong-doer. One of them may be sued alone (*g*); but if judgment is recovered against one part owner, it seems that no action can be brought against the others, though the judgment is unsatisfied (*h*).

Contribution.

The rule that there is no contribution between wrong-doers does not prevent a part owner who has been compelled to pay the whole of the damages from recovering in an action for contribution against his co-owners (*i*). And money so paid for damages, where the owner's liability is limited, may be brought into account as money disbursed for the

(*d*) See *The Prinz Frederick* (1817), 2 Dods. 451.

(*e*) *Supra*, p. 90.

(*f*) *The Normandy* (1871), L. R. 3 A. & E. 152; *The Calcutta* (1869), 17 W. R. 744.

(*g*) *Mitchell v. Tarrutt* (1794), 5 T. R. 649. As to the liability of part owners by the civil law, see *supra*, p. 77, note (*l*). By the maritime law a part owner was liable only to the extent of his interest in the ship: Emerigon, *Contr. à la grosse*, Chapter IV. s. 11; Grotius *de jur. belli et pacis*, lib. 2, ch. 11, s. 13. *Semble*, this was once the law of the English Admiralty: see *Alleson v. Marsh*

(1688), 2 Ventr. 181; *Gull v. Carswell*, *infra*, p. 163, note (*e*); and (*semble*) is now the law in France.

(*h*) *Brinsmead v. Harrison* (1872), L. R. 7 C. P. 547. As to the several liability where two ships are sued in Admiralty, see *The Atlas*, 5 Otto, 302; *The Juniata*, 3 Otto, 337; *The Alabama* and *The Gamecock*, 2 Otto, 695. A part owner who has given a bond for the release of his ship has a right to contribution if called on to pay any money in respect of the bond.

(*i*) 1 Smith's Lead. Cas. 11th ed. p. 155.

use of the ship (*k*). Nor does the doctrine of no contribution between wrong-doers prevent one of two ships in fault for a collision recovering from the other part of the damages which she has been compelled to pay to a third ship, against which she was driven by the first collision (*l*). Contribution for damages paid for loss of life or personal injuries can be recovered from the owners of another vessel held partly to blame, but only when the parties recovering such damages could have successfully sued the owners of the other vessel for them in the first instance (*m*).

If a collision occurs between two ships belonging to the same owner, his only remedy is against the actual wrong-doer. And the case seems to be the same where the two ships have one or more part owners in common. But the owners of cargo, or passengers, on board either ship can recover in an action of tort against the shipowners, subject to this, that where both ships are to blame, and the shipowners are protected by the terms of their contract against the negligence of their servants, the right to recover is limited to a proportion of the loss sustained (*n*), and that where (as is not ordinarily the case) the protection extends to the negligence of the shipowner's servants, as well on board the carrying ship as on board other ships of the same owners, there is no right to recover at all (*o*).

Collision between two ships owned by the same persons.

The remedy of the officers and crew for loss in a collision between their own ship and another of the same owners is not affected by the fact that the officers and crew of both ships are in the employment of the same employers. The crews of

(*k*) Merchant Shipping Act, 1894, s. 505.

(*l*) *The Frankland*, (1901) P. 161. And so in America, *The Mariska*, 107 Fed. Rep. 989; *The Hudson*, 15 Fed. Rep. 162.

(*m*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 3.

(*n*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1.

(*o*) See *Chartered Mercantile Bank of India, China and London v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521. The law as here laid down, limiting the damages recoverable, does not depend upon the doctrine of *Thoro-*

good v. Bryan (1849), 8 C. B. 115, but upon what Dr. Lushington believed to be the ancient practice of the Admiralty Court. See *The Milan* (1860), Lush. 388, and *per Lindley, L. J.* (1883), 10 Q. B. D. 545. It would therefore seem to be unaffected by the decision in *The Bernina* (No. 2) (1887), 12 P. D. 58; 13 App. Cas. 1. See *per the M. R.*, 12 P. D. at p. 83. See also *The Bernina* (No. 1), 12 P. D. 36 (where the shipowners were not protected against the negligence of their servants, and were liable to cargo owners in contract), and *infra*, p. 248.

the two ships are not in a common employment in the sense that injury by the negligence of the crew of one of the vessels was an ordinary risk of the crew of the other (*p*).

Liability in
special cases.

The liability of the shipowner as carrier upon the contract of carriage for a collision whereby goods or passengers are injured (*q*); in respect of collisions abroad (*r*); in respect of collisions with or between foreign ships, or in foreign waters (*s*); of collisions where one or both ships are in tow (*t*); where three or more ships are involved in the collision (*u*); where negligence on board one ship causes a collision between two others, or injures another ship (*x*); and in respect of damage done to a pier or harbour works (*y*), are considered elsewhere.

(*p*) *The Petrel*, (1893) P. 320.

(*q*) p. 245 *seq.*

(*r*) p. 219 *seq.*

(*s*) p. 221 *seq.*

(*t*) p. 193 *seq.*

(*u*) p. 17.

(*x*) p. 17.

(*y*) pp. 83, 93.

CHAPTER IV.

PERSONS ENTITLED TO RECOVER.

ALL persons injured in their persons or property in a collision caused by the fault of one or both ships, and who have not themselves or through their agents been guilty of negligence causing the loss (*a*), are entitled to recover damages. Such persons are usually of one or other of the following classes: owners of the injured ship, whether they are registered as owners or not (*b*); passengers, master, or crew losing their clothes or effects (*c*); owners or consignees of cargo on board either ship; persons entitled under Lord Campbell's Act to recover damages for relatives killed (*d*), or persons on board either ship who are hurt in the collision (*e*); the indorsee of a bill of lading, even though the cargo has been sold (*f*); bailees, and other persons having a special property in, or temporary possession of, the ship or cargo (*g*).

It seems that part owners of the injured ship might recover damages for their respective losses in successive actions (*h*); and the defendant would not, it seems, be entitled to have the other co-owners added as plaintiffs, at any rate without their

Actions by
part owners:
consolidation
of actions.

(*a*) As to the division of loss in cases where both ships are in fault, see below, p. 136.

(*b*) *The Ilos* (1857), Swab. 100.

(*c*) *The Cumberland* (1862), 5 L. T. 496. As to a passenger by ferry in charge of his own mare, see *Willoughby v. Horridge* (1862), 12 C. B. N. S. 742.

(*d*) 9 & 10 Vict. c. 93; *infra*, p. 133. A posthumous child may recover for the loss of its father: *The George and Richard* (1871), L. R. 3 A. & E. 466.

(*e*) As to members of the crew so hurt, see *The Borodino* (1845), 5 L. T. 291; *Taylor v. Dewar* (1862), 2 B. & S. 58.

(*f*) *The Marathon* (1879), 40 L. T. 163.

(*g*) *The Okehampton*, (1913) P. 173; *The Minna* (1868), L. R. 2

A. & E. 97. A bailee may recover damages, though not himself liable to his bailor for loss or damage: *The Winkfield*, (1902) P. 42; overruling *Claridge v. Staffordshire Tramways Co.*, (1892) 1 Q. B. 422. In *The Charlotte*, (1908) P. 206, underwriters suing in the name of the sellers of a cargo, who had been paid by the buyers, were held entitled to recover the value of the goods from the wrong-doer. In an American case damages were recovered, although all interest in the injured ship had been transferred to a foreigner, whereby the ship was forfeited to the State: *The Nahob*, Brown, Ad. 115.

(*h*) *Addison v. Overend* (1796), 6 T. R. 766; *Sedgworth v. Overend* (1797), 7 T. R. 280.

consent in writing, nor to have the proceedings stayed until this was done, so that he should not be vexed by more than one action (*i*). If a part owner dies after the collision and before action brought, the right of action survives to the other part owners (*k*).

Underwriters must sue in name of assured.

The underwriters upon a ship, A., sunk by collision with B., cannot sue B. or her owners in their own names. Their only right of action is by subrogation to the rights of the owners of A.; and they must sue in the names of the owners of A. (*l*).

Person or owner of goods on board ship in fault can recover.

There was formerly doubt whether a person injured on board a ship which is herself in fault can recover at common law. This doubt, originating in the well-known case of *Thorogood v. Bryan* (*m*), was set at rest by the House of Lords in *The Bernina* (No. 2) (*n*). *Thorogood v. Bryan* was there overruled. It had never been recognized as law in the Court of Admiralty, Dr. Lushington having held that, *Thorogood v. Bryan* notwithstanding, the owners of cargo on board a ship in fault could recover half their loss against the other ship being also in fault (*o*).

Thorogood v. Bryan.

Thorogood v. Bryan was decided in 1849 by a very strong Court (Coltman, Vaughan Williams, Maule, Cresswell, J.J.). It held that the representatives of a passenger in an omnibus, who was killed by the combined negligence of the driver of the carrying omnibus and the driver of another omnibus, could not recover against the employer of the latter driver. The negligence in the carrying omnibus consisted in setting the passenger down in the middle of the street, and not drawing up to the kerb: the negligence in the other omnibus was carelessly driving over the passenger after he had been set down. The ground of the decision was that the

(*i*) Ord. XVI. r. 2, 11; *Jackson v. Kruger* (1885), 54 L. J. Q. B. 446; *Tryon v. The National Provident Institution* (1886), 16 Q. B. D. 678.

(*k*) See *Reaz v. Collector of Customs* (1813), 2 M. & S. 223; *Martin v. Crompe* (1697), 1 Ld. Raym. 340.

(*l*) *Simpson v. Thompson* (1877), 3 App. Cas. 279.

(*m*) (1849), 8 C. B. 115; *Catlin v. Hills*, *ibid.* See also *Armstrong*

v. Lancashire and Yorkshire Rail. Co. (1875), L. R. 10 Ex. 47; *Adams v. Glasgow and S. W. Rail. Co.* (1875), 3 Ct. of Sess. Cas. 4th ser. 215.

(*n*) *Nom. Mills v. Armstrong* (1887), 13 App. Cas. 1; followed in *Mathews v. London Street Tramways Co.* (1889), 58 L. J. Q. B. 12.

(*o*) *The Milan* (1860), Lush. 388; *The City of Manchester* (1880), 5 P. D. 3; *ibid.* 221.

passenger was "identified" with the driver of his own omnibus in the matter of negligence, and therefore, having by his own (*i.e.*, his driver's) negligence partly caused the accident, he could recover nothing. This case, though often questioned, did not come before a higher Court for review until 1888, when the House of Lords, affirming the decision of the Court of Appeal, overruled *Thorogood v. Bryan*. The facts in *The Bernina* were that Toeg, a passenger, and Armstrong, an engineer on board *The Bushire*, were killed in a collision between *The Bernina* and *The Bushire*, caused by faults in both vessels, but without fault in Armstrong or Toeg. It was held that the representatives of Toeg and Armstrong could recover full damages against the owners of *The Bernina* (*p*).

The Bernina.

A servant cannot recover against his employer for injury sustained in the course of his employment through the negligence of a fellow-servant (*q*). Therefore a seaman or a ship's officer cannot recover against the shipowners for loss or injury caused by the fault of one of themselves or of the master (*r*). But he may recover for loss or injury suffered in a collision with another ship of the same owners; and not the less so because the collision was caused by the fault of the crew of the other ship in the employment of his own employers (*s*). But a compulsory pilot is not a servant of the shipowner, and the rule above stated does not prevent him from recovering against the owner (*t*). A shipowner who has paid a claim

Shipowner's liability to crew.

(*p*) Lord Bramwell considered that *Thorogood v. Bryan* was rightly decided upon a point of pleading, and that the decision of the House of Lords involved the overruling of *Waite v. North Eastern Rail. Co.* (1858), E. B. & E. 719.

(*q*) *Priestly v. Fowler* (1837), 3 M. & W. 1; Chitty on Contr. 10th ed. 537. See *Wilson v. Merry* (1866), L. R. 1 Sc. App. 326. The Employers' Liability Act, 1880, does not apply to seamen or apprentices to sea service, or, it seems, to an officer. See the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 8; Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), ss. 10, 13.

(*r*) *Leddy v. Gibson* (1873), 11 Sess. Cas. 3rd ser. 329; *Hedley v. Pinckney & Sons S.S. Co.*, (1894) App. Cas. 222, where *Ramsey v. Quinn* (1874), 1r. Rep. 8 C. L. 322, suggesting a distinction in the case of the master, was not followed. In America the master and crew recovered half their losses against the other ship, where both were in fault; but the amount recovered by the master went to recompense cargo owners: *The City of New York*, 25 Fed. Rep. 149; cf. *The Titan*, 23 Fed. Rep. 413, where the fault was the pilot's.

(*s*) *The Petrel*, (1893) P. 320, *supra*, p. 112.

(*t*) *Smith v. Steele* (1875), L. R. 10 Q. B. 125.

under the Workmen's Compensation Act, 1906, may, in an action *in personam* in the Admiralty Division or in an action for indemnity under sect. 6 of the Act, recover such amount from the owner of the wrong-doing ship (*u*), but in an action *in rem* for damages by collision a claim for the amount paid under a workman's compensation award was disallowed, the award was held not binding on the Court, and the injury alleged, being by fright caused by seeing the defendant's ship looming out of a fog and bearing down on the plaintiff's vessel, held too remote and "not damages done by any ship" within the Admiralty Court Act, 1861 (20 Vict. c. 100) (*x*).

(*u*) *The Annie*, (1909) P. 176;
Cory & Sons, Ltd. v. France, Fenwick & Co., (1911) 1 K. B. 114.
 (*x*) *The Rigel*, (1912) P. 99.

As to whether such payments can be claimed as damages in an action *in rem*, see further, p. 280, *infra*.

CHAPTER V.

DAMAGES.

THE wrong-doer in a collision is liable for all the reasonable consequences of his negligence—"such damages as flow directly and in the usual course of things from the wrongful act" (a). This is the general principle, and where the damages claimed are in respect of loss or injury to ship or goods, occurring at, or immediately after, the collision, there is little difficulty in applying the rule. But where the loss, though consequent upon and connected with the defendant's negligent act, was not immediately caused by it, there is often great difficulty in determining whether damages in respect of such loss can be recovered as having been caused by the negligence. The question is closely connected with that discussed in a former chapter as to the legal consequences of negligence.

What damages may be recovered; general rule.

Assuming that there is a good cause of action, there is a difficulty in many cases of determining the measure of damages, and the proper items to be taken into account in estimating them. As similar facts giving rise to similar claims for damages are constantly recurring in collision actions, it will be convenient to collect the decisions upon this subject.

The general rule was thus stated by Dr. Lushington in *The Clarence* (b):—"The party who has sustained a damage by collision is entitled to be put, as far as practicable, in the same condition as if the injury had not been suffered." This appears to be the meaning of the phrase used in some of the

Restitutio in integrum.

(a) *Per Bowen, L. J., The Argentino* (1888), 13 P. D. 191, 201; *affd.* 14 App. Cas. 519; *The Notting Hill* (1884), 9 P. D. 105; *Victorian Railway Commissioners v. Coultas* (1888), 13 App. Cas.

222. The "usual course of things" includes the probable and reasonable conduct of those on board a ship in collision: *The City of Lincoln* (1890), 15 P. D. 15, 18.

(b) (1850), 3 W. Rob. 283, 285.

cases that the sufferer is entitled to *restitutio in integrum* (c). There is no difference between the Admiralty and common law rules as to what damages are recoverable (d). He is entitled to be paid the cost of the repairs, though he has become bankrupt since they were executed, and has not paid the shipwright who executed them (e). Where a vessel is damaged in a collision by the fault of two other vessels and recovers her loss from the vessel with which she has been in collision, such damages form part of the "damage or loss" caused to the vessel paying them under the provisions of the Maritime Conventions Act, 1911, and she can recover a proportional part from the other vessel partly to blame (f).

Cost of
repairs.

The owner of a ship wrongfully injured in a collision is entitled to have her fully and completely repaired; and if the necessary consequence of this is, that the value of the ship is increased, so that the owner receives more than an indemnity for his loss, he is entitled to that benefit. No deduction is made from the damages recoverable on account of the increased value of the ship, or the substitution of new for old materials (g). In this respect the owner of a ship injured by collision is in a different position from an owner claiming an indemnity under the ordinary marine policy of insurance (h). But where slight damage might have been effectually made good by bolts and braces, it was held in America that the expense of an entirely new beam should not be allowed (i). And the cost of repairs must not be inflated by delay or intermediate voyages (k).

Where, in order to effect repairs consequent on collision, it was necessary to dry dock the ship, it was held that the owner

(c) See this subject discussed at length, Roscoe's Measure of Damages in Actions of Maritime Collisions, p. 5. See also *The Inflexible* (1857), Swab. 200; *The Clyde* (1856), Swab. 23; *The Ironmaster* (1859), Swab. 441; *The Columbus* (1849), 3 W. Rob. 158; *The Gazelle* (1844), 2 W. Rob. 279, 280; cited by Sir R. Phillimore in *The Halley* (1868), L. R. 2 A. & E. 3, 7.

(d) *The Argentino* (1888), 13 P. D. 191, 195, 200.

(e) *The Endeavour* (1889), 6 Asp. M. C. 511.

(f) *The Cairnbahn*, (1914) P. 25.

(g) *The Pactolus* (1857), Swab. 173; *The Gazelle* (1844), 2 W. Rob. 279; *The Bernina* (No. 3) (1886), 6 Asp. M. C. 65; and see *The Star of India* (1876), 1 P. D. 466, 471.

(h) As to the rule of "one-third new for old" in insurance cases, see *Lohre v. Aitchison* (1879), 4 App. Cas. 755.

(i) *The J. T. Easton*, 24 Fed. Rep. 95.

(k) *The Henry M. Clark*, 22 Fed. Rep. 752.

was entitled to take advantage of the opportunity to fit bilge keels without contributing to the cost of the dry dock (*l*).

If the ship is totally lost, the owner is entitled to recover her market value at the time of the collision (*m*); and her value at her home port, and not in the foreign port to which she is taken after collision, is to be taken (*n*). Where the ship is of a special construction or character, and, although of special value to her owner, has little or no market value, damages must be estimated by considering what is her value to the owner as a going concern at the time she was lost (*o*). Her original cost, her condition at the date of her loss, money spent in upkeep, and her past earnings, have all to be considered (*p*). Interest on the amount of the damages is allowed from the day of the collision, if the ship was not earning freight. If she was earning freight, the owner is entitled to the estimated value of the ship at the time of her loss, together with the freight she would have earned, less the cost of completing the voyage or charter, and taking into account contingencies, wear and tear, and the special terms of the charter-party (*pp*). If the voyage or charter would have been completed before payment, the owner is also entitled to interest from the probable date of completion. If payment is made before that time, an allowance is made for discount. If, however, the plaintiff's loss exceeds the amount of the defendant's statutory liability, interest runs from the date of the collision, whether freight was being earned or not (*q*). If at the time of her loss the ship was upon a voyage to a port from which she was under charter to carry a cargo, and is totally lost, she is entitled, in addition to her value, to the

Value of
the ship, if
she is lost.

Interest, or
freight, if
freight was
being earned.

(*l*) *The Acanthus*, (1902) P. 17, following *The Ruabon SS. Co. v. London Assurance Co.*, (1900) App. Cas. 6. Cf. *The Reiher*, 2 Pr. Ad. Dig. 1747; *The Alfred* (1849), 3 W. Rob. 232, 239.

(*m*) *The Philadelphia*, (1917) P. 101; *The Clyde* (1856), Swab. 23; *The Ironmaster* (1859), Swab. 441; *The Columbus* (1849), 3 W. Rob. 158; *The Clarence* (1850), 3 W. Rob. 283; *The Laura Lee*, 24 Fed. Rep. 483.

(*n*) *The Blenheim*, 17 Fed. Rep. 608.

(*o*) *The Harmonides*, (1903) P. 1.

(*p*) Cf. *La Normandie*, 58 Fed. Rep. 427.

(*pp*) *The Philadelphia*, (1917) P. 101; *The Kate*, (1899) P. 165; *The Racine*, (1906) P. 273.

(*q*) *The Northumbria* (1869), L. R. 3 A. & E. 6; *The Empress of Britain* (1913), 29 T. L. R. 423. For a full statement by Sir R. Phillimore of the principle upon which compensation to the injured party is made in cases of collision, see *The Northumbria*, *ubi sup.* 12; see also *The Canada* (1860), Lush. 586; *The Clyde* (1856), Swab. 23; *The Ironmaster* (1859), *ibid.* 441; *The Columbus* (1849), 3 W. Rob. 158; *The Clarence* (1850), *ibid.* 283.

profits she would have made under the charter, but not to uncertain and speculative profits, where no employment is contracted for (*r*). Thus when a trawler was sunk a claim for loss of expected fishing profits was not allowed (*s*).

The principle upon which interest is allowed in Admiralty was discussed in *The Kong Magnus* (*t*). In that case interest on the damages was allowed from the probable termination of the voyage on which the ship was engaged at the time of the collision (19th April, 1878) to the date of payment, the action not having been brought until nearly eleven years (8th January, 1889) after the collision. In the same case it was held that there is no limitation to six years' interest by analogy to the Statutes of Limitation.

The Admiralty practice as to allowing interest on damages applies to common law actions which, before the Judicature Acts, the Admiralty Court had not, but which the Admiralty Division has, jurisdiction to entertain; also to actions transferred by consent to the Admiralty Division (*u*).

Loss of injured ship after collision presumed to have been caused by collision.

Where the ship is damaged but not sunk in the collision, and she afterwards receives further injury or is totally lost, the presumption ordinarily is that the subsequent injury or loss was caused by the defendant's negligence, and the burden is in theory upon the wrong-doer in the collision to prove that it was not so caused, but in practice the plaintiff frequently at any rate sets out to prove his case (*x*).

Where a ship was partially disabled in a collision for which she was not in fault, and subsequently drove ashore in consequence of the parting of her cable, it was held that the ship in fault for the collision was liable for the loss by the stranding (*y*). In this case Dr. Lushington said: "It is admitted that *The Pensher* is to blame for the collision, and the consequence of this is, that all the damage arising from

(*r*) *The Philadelphia*, (1917) P. 101, where the cases are considered; *The Kate*, (1899) P. 165; *The Racine*, (1906) P. 273; *The Clyde* and *The Columbus*, *ubi supra*, note (*q*).

(*s*) *The Anselma de Larinaga* (1912), 29 T. L. R. 587; *The City of Rome* (1890), 8 Asp. M. C. 542, n.

(*t*) (1891) P. 223.

(*u*) *The Gertrude; The Baron Aberdare* (1888), 13 P. D. 105.

(*x*) As in *The Bruxellesville* (1907, Fos. 323, 329), (1908) P. 312. This point does not appear in the report: see also *The Beta*, 44 Fed. Rep. 389.

(*y*) *The Pensher* (1857), Swab. 211, 213; *The Govino*, 5 Quebec L. R. 57.

the collision must be borne by *The Pensher*, unless it can be shown by clear and positive evidence that any part of that subsequent damage arose from-gross negligence or great want of skill on the part of those on board the vessel damaged."

In *The Mellona* (z), the ship having been disabled in the collision went ashore, and was totally lost. It was contended that she need not have gone ashore if she had been hove to, and proper skill had been shown by those on board; but Dr. Lushington held that *primâ facie* the loss was attributable to the collision. Where one vessel is found in fault for a collision, and the other is subsequently lost, the presumption of law is that the latter was lost in consequence of the collision. "In all questions of this description that is the *primâ facie* presumption; and great, indeed, would be the inconvenience, and still greater the difficulty, if, in all cases of this kind when the vessel did not go down immediately, but was subsequently lost, the Court had to enter into an investigation whether all the measures adopted on board the damaged vessel were right, or whether, if other measures had been pursued, the vessel might not have been saved" (a).

In another case a ship was run into whilst brought up and riding with two anchors down. One cable having parted in the collision, the other failed to hold her, and she drove ashore. It was held that the loss from her going ashore was recoverable as damages in the collision action (b).

So where, bad weather having come on, the injured ship went ashore twenty-one hours after the collision, the representatives of some of the crew who were drowned, but who might have been saved if they had gone on board other vessels which offered assistance after the collision, were held entitled to recover against the wrong-doing ship (c).

A steamship in the North Sea ran into and cut off the quarter of *The Albatross*, a barque. The barque's binnacle compass, log line, log glass, and working charts were lost in the collision, and her hull was damaged, so that she was

(z) *The Mellona* (1847), 3 W. Rob. 7, 13.

(a) See also *The Linda* (1857), Swab. 306.

(b) *The Despatch* (1860), 14 Moo. P. C. 83; *The Maid of Kent*

(1881); 6 P. D. 178.

(c) *The George and Richard* (1871), L. R. 3 A. & E. 466. See also as to this subject, *per* Martin, B., in *Wilson v. Newport Dock Co.* (1866), L. R. 1 Ex. 177, 187.

partly unmanageable. Those on board tried to take her into the Thames with a spare compass. Without negligence on their part, and in consequence of the loss of their chart and the damaged condition of the hull, she went ashore and was lost. It was held that the steamship owners were liable for her loss (*d*).

Where, in consequence of the collision, a steamship's condenser cover blew off, and water came into the ejection pipe, which was plugged, but the plug gave out as the ship was being towed into dock, and the ship sank, it was held that the loss was caused by the collision (*e*).

But the fact of a ship being injured by the negligence of another does not justify those on board in neglecting to take all reasonable measures to save the ship (*f*), and lessen the effects of the collision. They must exhibit ordinary courage in standing by their vessel, and show proper skill and seamanship according to the circumstances of the case. The Court, however, will make reasonable allowance for the excitement which usually attends a collision, and those on board will not be expected to be so acute in their judgment, or to act with the same skill and coolness, as if there had been no collision (*g*).

Where the injured ship went ashore, and those in charge wilfully refused assistance to get her off, it was held that her owners could not recover for loss arising from the obstinacy of those on board (*h*).

If the injured vessel is abandoned unjustifiably, the other vessel, though in fault for the collision, is not liable for a total loss, but only for the actual damage done in the collision (*i*).

The question whether the abandonment of a ship injured by collision was justifiable is for the Court to decide upon the particular circumstances of each case. In considering it the Court will not be exacting in requiring those on board to

Those on board the injured ship must exhibit ordinary skill and courage in standing by her.

They must take assistance, if necessary.

Unjustifiable abandonment.

(*d*) *The City of Lincoln* (1890), 15 P. D. 15.

(*e*) *Reischer v. Borwick*, (1894) 2 Q. B. 548, an action upon a policy for loss by collision.

(*f*) Including jettison, and acts which may give rise to general average contribution from the ship-owner. See *The Marpessa*, (1891)

P. 403; *The Toward*, *infra*, p. 131, note (*h*).

(*g*) *The Hannah Park and The Lena* (1866), 14 L. T. 675; *The Thuringia* (1872), 1 Asp. M. C. 283.

(*h*) *The Flying Fish* (1864), Br. & Lush. 436.

(*i*) *The Thuringia*, *ubi supra*.

stand by her. In *The Blenheim* (*k*), Dr. Lushington said: "When a collision takes place on a dark night, particularly at a tempestuous period of the year, and when the vessel producing the collision is of greater burden than the one struck, I cannot possibly settle, with satisfaction to my own mind, or security to justice, what ought to be the reasonable extent of fear and apprehension to the crew of the vessel so struck. It is impossible for any Court of justice to say, with any degree of certainty, what are the precise circumstances that would justify the abandonment of a vessel. If there be any reasonable prospect that the lives of the crew are endangered, I have determined, and I will do so until I am overruled, that they are justified in quitting the vessel, and the consequences must fall on the wrong-doer" (*l*).

If a ship is improperly abandoned after a collision, her owner will not be entitled to recover as damage caused by the collision, either the value of the ship or salvage expenses payable upon her being brought into port (*m*).

The Thuringia, a steamship which had been run down by the fault of another vessel, was improperly abandoned, and subsequently sank. It was held that she could recover no more than the expense which would have been incurred in making good the damage caused by the collision (*n*). The collision occurred sixteen or eighteen miles from Heligoland in fine weather; the ship remained afloat three hours after the collision, and might have been taken to Heligoland.

In another case (*o*) no attempt was made to repair the damage received in the collision, such damage consisting in a small hole which might easily have been stopped. In consequence of the hole being left unstopped the trawler sank. It was held that the defendant, who admitted liability for the collision, was only liable for the original damage. In a similar case (*p*), where neglect to stop the hole caused damage to the cargo by water, it was held that the cargo owner could not recover damages against the other ship,

Neglect to
repair injury
received in
the collision.

(*k*) (1854), 1 Sp. 285, 289.

(*l*) See also *The Linda* (1857), Swab. 306; *The Lindsay* (1867), Ir. Rep. Ad. 1 Eq. 259.

(*m*) *The Linda* (1857), Swab. 306.

(*n*) *The Thuringia* (1872), 1 Asp. M. C. 283.

(*o*) *The Egyptian*, (1910) P. 38.

(*p*) *The Eolides* (1832), 3 Hag. 367.

although she was in fault for the collision. The duty of the master of the injured ship to take proper steps to preserve, and, under some circumstances, to sell, an injured cargo, has been considered in several cases (*q*). It was held negligence in a master not to have discharged a cargo of beans which were wetted in a collision (*r*). Where a cargo was damaged partly by the collision and partly by the master's negligence in not carrying it on to the port of discharge without delay, it was held that damages for loss arising from the latter cause were not recoverable in the collision action (*s*). The Court will not, upon the application of the owner of a ship damaged in collision, order her sale (*t*).

Neglect to
beach.

A steamship at anchor in the Elbe (800 feet wide) was run into by the negligence of another ship. It was held that her owners were not entitled to recover as damages the cost of raising her. She sank some hours after the collision, and no water reached the engine room for half an hour after the collision. There was evidence that she might and ought to have been beached (*u*). But where beaching was not reasonably possible, it was held that there was no contributory negligence on the part of the crew of a barge in failing to beach her after the damage was done. The barge, moored in Tilbury Dock astern of a steamship, was struck by the propeller and sank (*x*). So a mistake of judgment in not beaching is not necessarily negligence (*y*).

Again, where insufficient measures were taken to repair a vessel, so that after being repaired, she sank at sea, it was held that the owners could not recover for a total loss (*z*).

Owner not
required to
raise ship
sunk in
collision.

Where a ship is sunk at sea by collision, there is no obligation upon the owner to raise her, even if it would be possible to do so (*a*). But if she is sunk in shoal water, or

(*q*) See *Cargo ex Argos* (1880), L. R. 5 P. C. 134, 165, and cases there cited.

(*r*) *Notara v. Henderson* (1872), L. R. 7 Q. B. 225; and see *The Elina* (1880), 5 P. D. 237, note; *The Bernina* (1886), 12 P. D. 36.

(*s*) *The Elina* (1880), 5 P. D. 237, note.

(*t*) *The Wexford* (1888), 13 P. D. 10.

(*u*) *The Hansa* (1889), 6 Asp. M. C. 268. Cf. *The Scotia* (1890),

6 Asp. M. C. 541; and *The Henri IV.*, 13 Quebec L. R. 379.

(*x*) *The Hornet*, (1892) P. 361.

(*y*) *The Frostburg*, 25 Fed. Rep. 451; *The Dauntless*, 116 Fed. Rep. 543, where the ship was in tow.

(*z*) *The Bruzellesville*, (1908) P. 312.

(*a*) *The Columbus* (1849), 3 W. Rob. 158; *The Franconia*, 16 Fed. Rep. 149; *Pettie v. Boston Tow-Boat Co.*, 49 Fed. Rep. 464.

in a position in which there is no difficulty in raising her, her owner would not be justified in at once abandoning her (*b*). Where an anchor and chain were slipped to avoid collision, and the cost of recovering them would have been more than they were worth, their full value was recovered as damages (*c*). If he elects to raise her, and it turns out upon a survey, that she is not worth repairing, he is entitled to recover as damages the expense of raising and docking her, less her value in the dock. If he repairs her at a cost exceeding her value before collision, he cannot recover the cost of repairs beyond such value; nor anything in the nature of demurrage (*d*). Where there was such delay in raising her, that it was impossible to determine the amount of the damage done by the collision, the claim was dismissed (*e*). If, acting as a prudent owner, he elects not to repair, and sells her, he is entitled to recover her value at the time of collision, less the proceeds of sale, together with interest from the date of the collision (*f*).

Where a ship is sunk by collision, and the owner pays to the wreck-raising authority the cost of raising her, the sum so paid is damages recoverable from the wrong-doer (*g*).

Damages for loss occurring during, or after, and in consequence of, the collision, but caused partly by negligence of the plaintiff, cannot be recovered as having resulted entirely from the defendant's negligence which caused the collision. Where, by the omission to cut a lanyard which held together two ships which had been in collision, the damage was increased, it was held to have been caused partly by the plaintiff's negligence in not cutting the lanyard (*h*). So damage to one vessel by the fluke of the other's anchor was

Damages increased by plaintiff's negligence after collision.

(*b*) Cf. *The Havilah*, 50 Fed. Rep. 331; *The Baltimore*, 8 Wall. 377; *The Thomas P. Wray*, 28 Fed. Rep. 526.

(*c*) *Johannsen v. The Elvina*, 4 Fed. Rep. 573.

(*d*) *The Empress Eugenie* (1860), Lush. 138. Cf. *The Minnie*, 26 Fed. Rep. 860; *Summers v. The Oneida*, 84 Fed. Rep. 716.

(*e*) *The Atlee*, 12 Fed. Rep. 734.

(*f*) *The South Sea* (1857), Swab. 141.

(*g*) *The Engineer, Tatham v.*

Burr, (1898) P. 382, approving *The North Britain*, (1894) P. 77. As to the liability of the owner of the sunken ship for such expenses, see *The Crystal*, (1894) App. Cas. 508; *Howard Smith v. Wilson*, (1896) App. Cas. 579.

(*h*) *The Massachusetts* (1840), 1 W. Rob. 371. See also *The Flying Fish* (1864), Br. & Lush. 426; *Grill v. General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600; *ibid.* 3 C. P. 476.

held to have been caused by the negligence of both ships, though the collision was caused entirely by the fault of the injured vessel, the circumstances being such that the collision would have been harmless but for the fact that the other vessel's anchor was in an improper position (*i*).

Damage increased by weak state of injured vessel.

If the damage received in a collision is greater than would ordinarily be the case because the injured ship was in a weak condition, the other is not the less liable for the entire loss, if she is in fault for the collision. The principle is, that if a part of the damage was clearly attributable to the wrong-doer, and it is impossible to draw the line with precision, and to say how much, the wrong-doer must make good the whole loss (*k*); but where the damage occasioned by the collision can be easily discriminated, defects disclosed in consequence of the collision, though existing prior to it, cannot be charged against the defendant (*l*). In America, however, it has been held that where a canal boat foundered after the collision, because she was so weak before the collision that she could not go into dry dock with her cargo on board to be repaired, the loss of cargo was not proximately caused by the defendant's negligence (*m*). In other American cases (*n*) half damages were given in such a case; and it is held to be negligence for the owner of an old and weak craft to expose her, without giving warning to other vessels, to the ordinary risks of contact with other craft at the wharves and slips of New York harbour (*o*).

Consequential damages.

What have been called consequential damages—that is to say, damages beyond the value of the ship or the cost of repairs—may in some cases be recovered (*p*).

Loss of expected salvage.

Where a smack was run down whilst engaged in perform-

(*i*) *The Margaret* (1881), 6 P. D. 76; cf. *The Young America*, 54 Fed. Rep. 410 (damage by jagged iron on a ship's side).

(*k*) *The Egyptian* (1864), 10 L. T. 910; *The Young America*, *supra*; *The Syracuse*, 18 Fed. Rep. 828; *The Howard*, 30 Fed. Rep. 280, and cases there cited; *The Bernina* (No. 3) (1886), 6 Asp. M. C. 65; *The Sam Gaty*, 5 Bissel, 190.

(*l*) *The Princess* (1886), 5 Asp. M. C. 451.

(*m*) *The New York*, 40 Fed. Rep. 900; but see *The I. M. North*, 37 Fed. Rep. 270, *aliter*.

(*n*) *The Gilson*, 35 Fed. Rep. 333; *The City of Augusta*, 30 Fed. Rep. 844.

(*o*) *The Syracuse*, 18 Fed. Rep. 828; *The N. B. Starbuck*, 29 Fed. Rep. 797; *The Reba*, 22 Fed. Rep. 546.

(*p*) As to whether the question of consequential damages is for the Court or the registrar and merchants, see below, p. 285.

ing a salvage service, she recovered the sum she would have received as salvage reward had she not been prevented from completing the service (*q*).

So freight which the injured ship is at the time of the collision engaged in earning, or under contract to earn, less the charges which would have been incurred in earning it, together with interest from the probable termination of the voyage, is always allowed as damages (*r*). "Loss by contact is, amongst other things, loss of the freight which the ship would have earned if she had not been crippled by the collision" (*s*). But reasonable efforts must be made to obtain other freight when the vessel is able to earn it (*t*). Where a ship was run down whilst on a voyage to Norway to bring home a cargo of lobsters, and another ship was taken up for the purpose, it was held that the freight of the lobsters was recoverable as consequential damages (*u*). But a claim for loss of expected fishing profits during the time it took to replace the lost vessel has been disallowed (*x*).

Loss of freight.

So the increase in value of cargo on board and belonging to the owner of the injured ship, which would have arisen had the cargo been carried to the port of discharge, and which by the collision the owner is prevented from earning, may be recovered as damages in the collision action (*y*).

If the injured ship sinks in consequence of the collision, the expenses of raising and docking her are recoverable as damages (*z*). And salvage or towage (*a*) expenses, whether incurred by the owner, or paid by him to salvors, are recoverable as damages, if they are properly incurred in consequence of injury received in the collision (*b*). In

Salvage expenses.

(*q*) *The Betsy Caines* (1825), 2 Hagg. Ad. 28.

(*r*) *The Northumbria* (1869), L. R. 3 A. & E. 6; *The Kate*, (1899) P. 165; *The Racine*, (1906) P. 273.

(*s*) *Per Erle, C. J., Heard v. Holman* (1865), 19 C. B. N. S. 1, 10. As to the cost of carrying goods to their destination, see *Rose v. Miles* (1816), 4 M. & S. 101.

(*t*) *The C. P. Raymond*, 28 Fed. Rep. 765.

(*u*) *The Yorkshireman* (1825), 2 Hagg. Ad. 30, note.

(*x*) *The Anselma de Larinaga* (1912), 29 T. L. R. 587.

(*y*) *The Thyatira* (1883), 8 P. D. 155.

(*z*) *The Empress Eugenie* (1860), Lush. 138; *The Annie* (1887), 12 P. D. 50.

(*a*) *The Inflexible* (1857), Swab. 200; *The Fletcher and The Grape-shot*, 42 Fed. Rep. 504; *The Benjamin F. Hunt, Jr.*, 34 Fed. Rep. 816. See also *The Young America*, 26 Fed. Rep. 174; *The Cepheus*, 24 Fed. Rep. 507; *The Fannie Tut-hill*, 17 Fed. Rep. 87.

(*b*) *The Linda* (1857), Swab. 306; *The Diana* (1874), 2 Asp. M. C. 366; *The Williamina* (1878), 3 P. D. 97, 99.

America the expenses of rescuing and sending ashore the crew of the wrong-doing ship, and of the consequent delay to the other ship, were allowed as damages (c). And the costs of both parties in a salvage action have been recovered (d); but in a later case some doubt was thrown upon this decision (e). The expense of bail in a salvage action is recoverable (f).

Costs of defending action brought by a vessel damaged against one of two vessels to blame.

Cost of detaining officers and crew.

Diminished market value.

Demurrage.

If a vessel is damaged by the fault of two others and brings an action against one and recovers, the vessel sued cannot recover any proportion of the costs of the suit if she has defended it unreasonably (g).

The cost of detaining the ship's officers whilst the ship was being repaired has been allowed as damages, where it was proved that the custom of the trade was not to discharge the officers at the end of the voyage (h). In America the cost of detaining the crew after the collision, and of attempts to save the cargo, has been allowed (i).

Where it was proved that the market value of a yacht sunk in a collision was diminished, it was held in Ireland that, in addition to the sum required for repairs, the difference between her market value before and after the collision was recoverable as damages (k).

Where the owners suffer loss by the enforced idleness of their ship which has been injured in a collision, demurrage is allowed by way of damages whilst the necessary repairs are being effected, and whilst any other business which is rendered necessary owing to the collision is being transacted which necessarily delays the vessel, such as making a protest and obtaining the necessary official documents (l). Where

(c) *Leonard v. Whitwell*, 19 Fed. Rep. 547.

(d) *The Legatus* (1856), Swab. 168, notwithstanding *Tindall v. Bell* (1843), 11 M. & W. 228.

(e) *The British Commerce* (1884), 9 P. D. 128.

(f) Ord. XII. r. 21a.

(g) *The Cairnbahn* (No. 2) (1914), 30 T. L. R. 309, C. A. In the Court below Evans, P., laid down an Admiralty rule of practice disentitling the owners of the vessel sued to add the costs to the damages paid in making up their claim against the other ship partly to blame. The Court of Appeal did

not pronounce on this rule.

(h) *The Inflexible* (1857), Swab. 200.

(i) *Hoffman v. Union Ferry of Brooklyn*, 68 New York Rep. 385.

(k) *The Georgiana and The Anglican* (1873), 21 W. R. 280.

(l) *The City of Buenos Ayres* (1871), 1 Asp. M. C. 169; *The Clarence* (1850), 3 W. Rob. 283; *The Inflexible* (1857), Swab. 200; *The Star of India* (1876), 1 P. D. 466. As to demurrage where the injured ship is one of a line advertised to sail at fixed dates, see *The Black Prince* (1860), Lush. 568. In *The City of Peking*

two collisions have occurred each of which renders it necessary for the vessel to be repaired the loss of time will be attributed to that which is first in time (*m*).

Where a dredger was sunk by the defendant's steamship, and afterwards raised and repaired, the owners were held entitled to damages not only for the period during which they had hired another dredger, but also for the period during which they had lost the use of their own dredger (*n*).

A series of decisions in the House of Lords has made it clear that a public body not working for mercantile gain, which is temporarily deprived of its ship by a wrong-doer, is entitled to substantial damages, irrespective of the special use which it might have made of her during the time she was under repair. Earlier decisions of the Admiralty Court and of the Court of Appeal, to the effect that pecuniary loss only is recoverable as damages, are no longer law. In *The Greta Holme* (*o*), a dredger, belonging to the Mersey Docks and Harbour Board, and *The Mediana* (*p*), a lightship belonging to the same owners, was run down and injured by the negligence of the defendant ship. The Board had no spare dredger, and in consequence of her detention whilst under repair mud accumulated in the harbour, which had afterwards to be removed. As regards the lightship, the Board had at considerable expense provided a spare lightship to take the place of this or other lightships which, owing to collision or other cause, had to be withdrawn from their stations. It was held in both cases that the Board were

Other
expenses.

Vessels
belonging to
public bodies.

(1890), 15 App. Cas. 438, a claim for demurrage, whilst a substituted vessel belonging to the same owners did the work of the injured vessel, was disallowed: see the observations on this case in *The Mediana*, (1900) A. C. 113, 119 *seq.*, distinguishing it from *The Greta Holme*, *infra*, and *The Mediana*. If the injured ship is a passenger ship running in an advertised service, it is held in America that the owner is entitled to receive as damages the probable cost of hiring another vessel to perform her service; and not the less so because he has another vessel kept as a stand-by to be used in case of accidents: *The Emma Kate*

Ross, 50 Fed. Rep. 845. Cf. *The Cayuga*, 7 Blatchf. 385; *The Osceola*, 34 Fed. Rep. 921. Where the injured ship lost her charter and got a new and less profitable one, the difference between the values of the two charters was allowed as damages: *The Belgenland*, 36 Fed. Rep. 504. The rate of demurrage depends on the circumstances of each case, and on the profitableness of the employment of the ship near the time of collision.

(*m*) *The Haversham Grange*, (1905) P. 307; 10 Asp. 156.

(*n*) *The Tugela* (1913), 30 T. L. R. 101.

(*o*) (1897) App. Cas. 596.

(*p*) (1900) App. Cas. 113.

entitled to substantial and not merely nominal damages for the detention of their craft whilst under repair in consequence. These cases were followed by *The Marpessa* (q) when the previous decisions were approved, but clearly limited to non-mercantile claimants (r), the latter having still to prove an actual loss (s), and the principles laid down have been applied to the case of a warship (t).

Where damages are estimated upon the footing of a total loss, although in fact the ship is subsequently saved and repaired, with the exceptions mentioned above, nothing will be allowed for, or in the nature of, demurrage (u).

In some of the cases (x) where damages were allowed in respect of the loss of a specific voyage, demurrage during the probable duration of the voyage appears to have been allowed; this was clearly wrong (y). Thus in *The Star of India*, where, in consequence of the collision, a vessel lost the benefit of a charter, damages were allowed for the loss of the charter-party in addition to demurrage (z).

Loss of
charter-party.

The principle upon which loss of a charter is allowed as damages is that the value of the charter is an accurate measure of the value of the ship to the owner during the time she is under repair, or is otherwise by reason of the collision prevented from earning money or being of use to her owner. Where at the time of the collision there is no existing charter, but there is a contract under which the ship is engaged to sail upon a profitable voyage, the probable earnings of the ship under the contract will be allowed as damages. *The Argentino*, at the date of the collision, was under an engagement to take in a cargo at Antwerp for Batoum, taking the place of one of a line of ships advertised to sail between Antwerp and Batoum. It was held by the House of Lords,

(q) (1907) A. C. 241; 10 Asp. 197, 232.

(r) American decisions are hardly in accordance with *The Mediana*. Cf. *The Conqueror*, 166 U. S. Rep. 110 (a yacht run down); *Fisk v. City of New York*, 119 Fed. Rep. 256; *The Providence*, 98 Fed. Rep. 133; *The George W. Roby*, 111 Fed. Rep. 601.

(s) *The Bodlewell*, (1907) P. 286; 10 Asp. 479.

(t) *The Astrakhan*, (1910) P. 172.

(u) *The Columbus* (1849), 3 W. Rob. 158.

(x) *The Star of India* (1876), 1 P. D. 466; *The Consett* (1880), 5 P. D. 229.

(y) *The Argentino* (1888), 14 App. Cas. 519, 523.

(z) *The Star of India*, *ubi supra*; *The Consett*, *ubi supra*.

affirming the decision of Bowen and Lindley, L. J.J. (diss. Lord Esher, M. R.), that there should be allowed as damages by the collision "the ordinary and fair earnings of such a ship as *The Argentino*, having regard to the fact that she was put up as one of W. & L.'s line of steamers trading to the Black Sea, and advertised as such" (a). *The Kate* (b) was sunk upon her outward voyage to a port from which she was under charter to carry a cargo. Her owner recovered her probable value at the end of the voyage, plus the profits of the charter. This principle was subsequently extended to the case of a second charter (c).

A fishing smack recovered, besides the value of her nets and gear which she was obliged to cut adrift, the amount she might reasonably have expected to earn during the rest of the season (d), and on the principle of the above cases this appears to be the correct principle of assessment. But in a case where a trawler was sunk a claim for the loss of fishing profits during the time it took to replace her was not allowed (e).

Loss of fishing voyage.

The value of an anchor and chain properly slipped in the hope of avoiding collision will be recoverable as damages, whether the step is successful or not (f).

Anchor slippe .

In America, average charges incurred by a cargo owner in a foreign port, by reason of a collision in American waters, were recovered as damages caused by the collision (g). In this country a similar claim by the shipowner was disallowed (h).

Average charges.

Damages which, although consequent upon the collision, do not immediately or necessarily flow from it, cannot be

Remoteness of damage.

(a) *The Argentino* (1889), 14 App. Cas. 519. As to a contract under which the owner of the injured vessel is able to run another of his own ships, see *The City of Alexandria*, 40 Fed. Rep. 697.

(b) (1899) P. 165. Cf. *The Breeze*, *The Appendix*, H.M.S. Fork, and distinguish *The Undine*, *The Kaikoura*, all cited in *The Kate*.

(c) *The Racine*, (1906) P. 273; 10 Asp. 300.

(d) *The Gleaner* (1876), 3 Asp. M. C. 582; *The Clarence* (1850),

3 W. Rob. 283, 286; *The Risoluto* (1883), 8 P. D. 109.

(e) *The Anselma de Larinaga* (1912), 29 T. L. R. 587.

(f) *Johannsen v. The Elvina*, 4 Fed. Rep. 573; *Majoribanks v. Boyd*, *supra*, p. 39 (f).

(g) *The Energia*, 66 Fed. Rep. 604.

(h) *The Marpessa*, (1891) P. 403. It was doubted by Gorell Barnes, J., in *The Toward*, 8th May (or April?), 1899, whether the balance of general average can ever be, as was suggested in *The Marpessa*, in the shipowner's favour.

recovered against the ship in fault for the collision (*i*). Where the master and part-owner of a vessel lost by collision claimed his probable future earnings as master, and profits as part-owner, it was held that he was entitled to nothing more, by way of damages, than the value of the ship at the time of the collision (*k*). And where a vessel put into port for repairs necessitated by collision, and her cargo of fruit was necessarily discharged to enable the repairs to be made, and reloaded, damage occasioned partly by handling and partly by natural decay during the delay was held not to be damage "consequent upon collision," within the meaning of a policy of insurance (*l*). A claim for the amount payable under a workman's compensation award for incapacity caused by fright at seeing the defendant's ship looming out of a fog and bearing down on the plaintiff's vessel was disallowed on the grounds that the damage was not "done by any ship" within the meaning of the Admiralty Court Act, 1861 (24 Vict. c. 10), and was too remote (*m*). Where the repairs to a vessel were delayed by a strike, damages for the loss of the vessel during the period in which the repairs were interrupted were held a consequence of the collision and recoverable (*n*).

Loss of
market.

It was not the practice to give damages for loss of market for cargo on board a ship injured by collision (*o*). The difference between the price of the goods when they arrive at the port of discharge and the price when they ought to have arrived, and but for the collision would have arrived, was regarded as so uncertain that it was held not to be the reasonable consequence of the collision, but this hard and fast rule is no longer in force, since the question now appears to

(*i*) As to remoteness of damages, see Mayne on Damages, 7th ed. 48 seq.; 2 Smith's L. C. 11th ed. 523 seq.; and per Martin, B., in *Wilson v. Newport Dock Co.* (1866), L. R. 1 Ex. 177, 187; cf. *The Gertor* (1894), 7 Asp. M. C. 472. As to whether remoteness is a question for the registrar or the Court, see *infra*, p. 285.

(*k*) *The Columbus* (1849), 3 W. Rob. 158; and see *The Clarence* (1849), 3 W. Rob. 283.

(*l*) *Pink v. Fleming* (1890), 25 Q. B. D. 396.

(*m*) *The Rigel*, (1912) P. 99.

(*n*) *H.M.S. London*, (1914) P. 72.

(*o*) *The Parana* (1877), 2 P. D. 118, 124; *The Notting Hill* (1884), 9 P. D. 105; *Smith v. Condry*, 1 How. 28; *The Jos. W. Dyer v. National Steamship Co.*, 14 Blatchf. 483. See, however, *France v. Gaudet* (1871), L. R. 6 Q. B. 199, where the price of goods contracted to be sold at a profit was recovered in an action for conversion.

be one of fact, namely, whether the loss of market is a reasonable consequence of the collision, which is the subject of the action (*p*).

Damages for loss of life are now recoverable under Lord Campbell's Act (*q*) by the relatives or legal personal representatives of persons killed in a collision, either in a personal action against the person liable, or in proceedings *in rem* (*r*); and notwithstanding the provisions of Lord Campbell's Act, by which an action to recover damages for loss of life must be commenced within twelve calendar months after the death of the deceased person, it has been held that the effect of sect. 8 of the Maritime Conventions Act, 1911, is to make the action maintainable, if brought within two years (*s*). In Canada the Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24), s. 10, has been held not to give Admiralty jurisdiction in case of personal injury (*t*). There being no civil action at common law for the death of a human being, a claim by the Lords Commissioners of the Admiralty for the capitalised value of the pensions payable to the relatives of the crew of a submarine sunk by the negligence of the defendants was disallowed (*u*).

Damages for loss of life.

Damages recovered by the shipowner in a collision action are not subject to a claim for life salvage services rendered to his ship in consequence of the collision (*x*).

Damages not subject to life salvage claim.

A penalty of 50*l*. in addition to damages can be recovered against a ship that injures a light-ship (*y*).

Penalty for injuring a light-ship.

Full damages may be recovered by the injured party though he has been compensated for the whole or part of his loss by his insurers (*z*). But, as will be seen below (*a*),

Damages where loss paid by insurers.

(*p*) *Dunn v. Bucknall Brothers*, (1902) 2 K. B. 614.

(*q*) 9 & 10 Vict. c. 93; Fatal Accidents Act (27 & 28 Vict. c. 95). As to assessment of damages by a jury in the Admiralty Division, see *The Orwell*, 13 P. D. 80.

(*r*) The Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 5, see *infra*, pp. 154 *seq.* Formerly only by action *in personam*, see *The Vera Cruz* (No. 2) (1884), 9 P. D. 96; *The Theta*, (1894) P. 280; *The Circe*, (1906) P. 1;

10 Asp. 149.

(*s*) *The Caliph*, (1912) P. 213.

(*t*) *The Enrique*, *Stockton*, V. Ad. Dig. Canada, 157.

(*u*) *The Amerika*, (1914) P. 157, *affd.* (1917) App. Cas. 38.

(*x*) *The Annie* (1887), 12 P. D. 50.

(*y*) 57 & 58 Vict. c. 104, s. 666.

(*z*) *Yates v. Whyte* (1837), 4 Bing. N. C. 272; *Brauburn v. Great Western Rail. Co.* (1875), L. R. 10 Ex. 1.

(*a*) p. 256.

he is bound to pay to his insurers such damages as he may recover, to the extent of the sum received from his insurers.

Damages recoverable by cargo-owner upon the contract of carriage.

Damages recoverable by a cargo-owner, or by a passenger, upon the contract of carriage, are such as "a man when making the contract would contemplate would flow from a breach of it" (b). This somewhat vague rule is the only one to be extracted from the cases. It is beyond the scope of this work to discuss the general subject, and it is sufficient here to state that a breach of the contract of carriage, consisting in negligence of the carrier causing collision and loss of the goods carried, has the same effect as regards liability to damages as a breach of the contract in any other respect (c).

The shipowner's general liability as carrier is considered elsewhere (d).

Effect of the rule as to division of loss upon the amount of damages recoverable.

The former rule as to division of loss where both ships were in fault, whilst it extended the right to recover damages by superseding the common law doctrine of contributory negligence, also limited the amount of damages recoverable to one-half the claimant's loss. In the case of an owner of cargo on board one ship suing the other in tort, it abridged to this extent his common law right to recover full damages. But it did not affect his right to recover full damages upon the contract of carriage (e). And if part of the loss had been recovered against the owner of the carrying ship, it would seem that the balance up to one-half the loss might be recovered against the other ship (f). The former rule of division of loss is superseded by the Maritime Conventions Act, 1911, sect. 1, by which when two or more vessels are

(b) *Per Blackburn, J., Hobbs v. London & S. W. Rail. Co.* (1875); L. R. 10 Q. B. 111, 121.

(c) As to the subject generally, see *Mayne on Damages*, 7th ed. pp. 10 *seq.* *The Parana* (1876), 1 P. D. 452; 2 P. D. 118; *McMahon v. Field* (1881), 7 Q. B. D. 591; *Lilley v. Doubleday*, *ibid.* 510, are amongst the later cases on the subject.

(d) *Infra*, p. 245.

(e) See *Chartered Mercantile*

Bank of India v. Netherlands India Steam Navigation Co. (1882), 9 Q. B. D. 118; 10 Q. B. D. 521; *The Bushire* (1886), 5 Asp. M. C. 416.

(f) In *The Demetrius* (1872), L. R. 3 A. & E. 523, it does not appear whether the plaintiff claimed the whole or half his loss: *The Milan* (1860), Lush. 388, and *The Hector* (1883), 8 P. D. 218, seem to limit his right to half.

at fault damages are recovered in proportion to the degree of fault of each. The effect of the rule as to division of loss is fully considered in the next chapter.

The Acts limiting the shipowner's liability largely affect the amount of damages recoverable by the sufferer in a collision. These enactments also are fully considered in Chapter VII.

CHAPTER VI.

THE RULE AS TO DIVISION OF LOSS.

UNTIL the Maritime Conventions Act, 1911 (*a*), was passed, division of loss in cases where at common law no damages can be recovered by reason of contributory negligence on the part of the plaintiff, was decreed in collision cases under a rule of the Court of Admiralty extended to all courts by sub-sect. (9) of sect. 25 of the Judicature Act. This rule has now been superseded by statutory enactment, but as it would appear that the intention of the Act is not to alter the law as to the cases in which loss should be divided, the history of the rule and decisions upon it remain relevant.

The four cases
of collision.

“In the first place it (collision) may happen without blame being imputable to either party, as where the loss is occasioned by a storm or other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame—where there has been want of due diligence or of skill on both sides. In such a case the rule of law is that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party only; and then the rule is that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down; and in this case the innocent party would be entitled to an entire compensation from the other” (*b*).

This statement of maritime law of England as to the inci-

(*a*) 1 & 2 Geo. 5, c. 57. Sect. 1 is quoted *infra*, p. 143.

(*b*) *Per* Lord Stowell (then Sir W. Scott), *The Woodrop Sims*

(1815), 2 Dods. 83, 85. In *The Lord Melville* (1816), cited 2 Shaw's App. Cas. 402, is a dictum to the like effect.

dence of loss in case of collision does not occur in any sentence or judgment; it is an *obiter dictum* of Sir W. Scott, afterwards Lord Stowell. It has, however, never been questioned as an accurate statement of the law; it has been cited with approval in the House of Lords (c), and it has frequently been acted upon by the Courts since its deliverance in the year 1816. It is, however, open to two criticisms. In the first place, it is not in accordance with numerous decisions of the High Court of Admiralty during the seventeenth and eighteenth centuries. During that period the rule of division of loss was frequently applied in cases where the cause of collision was uncertain, and also where the collision was purely accidental (d). However, whatever doubts there may be as to the scope of the rule when Sir W. Scott thus stated it in 1816, there can be no doubt that in modern times the rule applied only in cases of "both to blame." Secondly, recent cases show that the loss is not divided in every case where there is "want of due diligence or of skill on both sides," but that a ship is liable only for such want of diligence or skill as has caused or contributed to the loss. Upon this point there has been, if not an alteration of the law, an increasing disposition to disregard negligence which, though connected with the collision, is not its proximate cause (e).

The earliest trace (f) of the rule as to division of loss appears in the Laws of Oleron, a code of maritime law attributed to the twelfth century (g), and recognised as

History of
the rule.
The Laws of
Oleron.

(c) *Hay v. Le Neve* (1824), 2 Shaw, Sc. App. Cas. 409.

(d) The authorities for the statement in the text are a series of cases (unreported) collected from the Admiralty Court books. They are set out in the note at the foot of this chapter.

(e) See cases, *supra*, p. 30.

(f) The Book of Exodus, ch. xxi., vv. 35, 36, is cited by Cleirac in support of the rule. The passage is as follows: "And if one man's ox hurt another's, that he die; then they shall sell the live ox, and divide the money of it; and the dead ox also they shall divide. Or if it be known that the ox hath used to push in time past, and his owner hath not kept him in; he shall surely pay ox for ox; and

the dead shall be his own." Cf. Laws of Alfred: "If an ox wound another man's ox, and it die, let them sell the live ox, and have the worth in common, and also the flesh of the dead one." In the seventeenth century, a seaman, seeing a ship that bore marks of having been in collision, says to her crew, "I think, brothers, you have been bulling it somewhere"; and we are told that the word "bulling," in common acceptation with seafaring men, is where one ship runs foul of another: Ad. Ct. Miscell. Books, 300, 5th Nov. 1677. "Moses' law" was also a term in use with seamen (*ibid.* No. 302, 29th Jan. 1691—2), and perhaps refers to this matter.

(g) 1 Pardessus, Collection des Lois Maritimes, pp. 283 *seq.*

authoritative in this country at least as early as the fourteenth century (*h*). This code contains a provision (Art. 15) that when a ship at anchor is damaged by a ship under way, the loss on the ship shall be divided between the owners of the two ships, and the loss on the cargo between the merchants (*i*), provided the master and mariners of the ship under way swear that they did not do the damage wittingly (*k*).

This provision for distributing the loss in case of collision appears in various forms in the laws of Wisby and other Northern Codes, in the Consolato del Mare, in the Ordonnance de la Marine of Louis XIV., and in almost every code of maritime law since the Middle Ages. The division, however, is not by all the codes made in equal shares; and in some the loss appears to have been distributed in the way of general average contribution (*l*). The principle or idea underlying the rule seems to have been that collision was a peril of the sea—a common misfortune to be borne by all parties, either equally or rateably according to their interests at risk.

The English Admiralty.

The rule of dividing the loss being found in the Laws of Oleron and the early codes, the judges of the English Admiralty were at a loss to find reasons for applying it when negligence was proved against one or both ships. The idea of a collision having been caused by negligence does not seem to have been present to the minds of the framers of the Laws of Oleron; and it is not very distinct in the later codes. When, in the early part of the seventeenth century, collision cases became frequent in the Admiralty Court, the question of negligence comes into prominence; and it is just at this time that sentences dividing the loss first appear in the

(*h*) The Record or Roll *De Superioritate Maris et Jure Admiraltatis Angliæ* of 12: Ed. 3. (1338), refers to La Ley Oleyroun as the law of the English Admiralty: see Prynne, *Animadv.* 109; Selden's *Mare Clausum*, l. 2, c. 24. A record set out by Prynne, *Animadv.* 110, 117, shows that the Law of Oleron was administered in the local Court of Bristol in 24 Ed. 3 (1350). There are extant in the archives of the City of London and elsewhere in this country MSS. of

these laws dating from the early part of the 14th century: Black Book, of the Admiralty, Rolls Ser. vol. 1, lxxxii.

(*i*) "Le dommage doit estre ap-
prisie et party par moitié entre les
deux nefz, et les vins qui sont
dedens les deux nefz doivent partir
du dommage entre les marchaunts":
Black Book, i. 108; ii. 229, 1449;
iii. 21.

(*k*) De bon gré.

(*l*) See further, as to these codes,
the note at the foot of this chapter.

records. Whether, previously to this date, loss arising from collision was, in practice and in fact, divided, is uncertain. There is no record earlier than the seventeenth century of loss by collision having been divided by a sentence of the English Admiralty. In the seventeenth century there are many sentences dividing or apportioning the loss; but the reasons given for dividing the loss are various and inconsistent. Sometimes it is because the collision was not wilful, sometimes because of the difficulty of proving negligence (*m*), sometimes because of the difficulty of apportioning the loss to the degree of fault. As the idea of liability for negligence developed and nautical experts were called in to assist the Admiralty judges in dealing with questions of seamanship, so the necessity for finding some intelligible reason for the arbitrary *rusticum judicium* became apparent. So late as 1648 a sentence occurs in which its application is expressed to depend upon the principles of general average contribution. Not until the last century is it expressly applied to a case where both ships are found to be in fault; and as late as 1789 it is applied where neither ship was in fault. The development, in the common law courts, of the doctrine of contributory negligence probably supplied a plausible reason for the application of the rule in the case of "both to blame"; and also for confining its application to that case alone. Further information as to the history of the rule in mediæval law, and in the English Admiralty, will be found in the note at the foot of the present chapter.

As to the policy and justice of the rule, there has been much difference of opinion. Cleirac approves of it upon the questionable ground that the law must not give any inducement to the owners of old and worthless ships to get them run down for the sake of the damages they may recover (*n*). Policy of the rule.

(*m*) Cf. Grotius, *De jure belli et pacis*, l. 2, c. 17, § 21; Loccen-
tius, l. 3, c. 9, § 11; Valin, sur
l'Ordonnance, l. 3, tit. 7, Art. 11,
vol. 2, 183, "par la difficulté de re-
connoître de quel côté est la faute,
et juger même si la faute est de
nature à mériter que celui à qui
elle est imputée supporte elle dom-
mage en entier, il arrive presque
toujours que le dommage reçu de

part et d'autre est jugé avarie com-
mune."

(*n*) "Est considérable que les
gens de mer sont ordinairement
enclins au mal et à la baraterie";
Cleirac, *Us et Coustumes de la Mer*,
p. 68; Boulay Paty, tit. 12, s. 6—
a low estimate of maritime
morality, shared by judges of the
Admiralty in recent times. See per
Dr. Lushington, *The Lady Camp-*

That he had not a high opinion of its justice seems probable from his stigmatizing it as *judicium rusticorum* (o), a term applied to it also by Chancellor Kent (p). In the courts of this country it has been much abused. Lord Denman, C. J., said of it: "It is an arbitrary provision of the law of nations, not dictated by natural justice, nor, possibly, quite consistent with it" (q). And more recently Lord Selborne, C., spoke of it in similar terms (r). The arguments adduced in its favour are as fanciful as they are divergent. The reason given by Cleirac, that, but for it, shipowners would purposely get their ships run down, on the chance of recovering excessive damages, seems far-fetched. That the rule conduces to safety at sea, by encouraging shipmasters to take every possible precaution (s), or that it makes masters of large ships more careful of small ones (t), as has been suggested by other authorities, is at least doubtful. That it tends to avoid interminable litigation, as has been stated by a high authority in this country (u), is not evident. Lindley, L. J., is of opinion that, where the negligence of the two ships is equal, it works better justice than the rule of the common law. "Why, in such a case, the damages should (at common law) not be apportioned, I do not profess to understand" (x). In some cases, however, as applied in this country, it worked positive injustice. It prevented the innocent owner of cargo on board either ship from recovering from the wrong-doing owner of either ship more than a part of his loss (y): and it

bell (1825), 2 Hag. Ad. 5; and Sir R. Phillimore in *The Macleod* (1880), 5 P. D. 254.

(o) "Les jurisconsultes nomment et qualifient cette décision par moitié *judicium rusticorum* . . . et se pratique ordinairement par les arbitres, arbitrateurs, et amiables compositeurs, lors et quand l'intérieur des parties, ou le motifs de la question n'est pas à découvert et connu; ou bien quand il y a de la coulpe de part et d'autre —aut quando sunt diversæ *judicium opinionum* hine et inde probabil. Boer. dec. 42, n. 32—tel fut le jugement reconnu tant juridique du sage Roy Salomon, qu'il donna sur la question naturelle entre deux mers" (sic).

(p) 3 Kent's Comm. § 231.

(q) *De Vaux v. Salvador* (1835), 4 Ad. & El. 420.

(r) (1881), 7 App. Cas. 799.

(s) Celle-ci est fondée sur une raison d'intérêt public, à fin de rendre les maîtres des navires plus soigneux à prendre toutes les précautions possibles pour éviter cet abordage: Pothier, vol. 4, p. 444, *Avaries*, § 155.

(t) See Bell's Comm. (ed. 1870, by McLaren), i. 627.

(u) See *per* Lord Blackburn (1881), 7 App. Cas. 819.

(x) *The Bernina* (1887), 12 P. D. 58, 89.

(y) See *per* Lord Blackburn, *ibid.*; *The Milan* (1860), Lush. 388; *The Drumlanrig*, (1910) P. 249; (1911) App. Cas. 16; but

worked in an arbitrary and uncertain manner when combined with the statutory limitation of liability (z). Similar criticisms might be made on the revised rule embodied in the Maritime Conventions Act, 1911, but whether equitable or not the rule is now sanctioned by an Act of Parliament.

By 17 & 18 Vict. c. 104, s. 298, where both ships infringed the statutory steering rule, the Admiralty rule as to division of loss was, in effect, repealed. Where one of the ships, A., infringed the statutory rule, and the other, B., was in fault in some other respect (*e.g.*, look-out), A. could recover nothing, while B. recovered half his loss. If both ships were in fault cargo owners could recover half their loss in all cases. This unsatisfactory state of the law was put an end to by the Merchant Shipping Amendment Act, 1862 (a).

Merchant
Shipping Act,
1854.

Before the passing of the Judicature Act the rule as to division of loss had no application except in the Court of Admiralty. Elsewhere the rule that a person cannot recover damages for loss caused wholly or in part by his own negligence was applied in collision as in all other cases. The Judicature Act (36 & 37 Vict. c. 66), s. 25, sub-s. 9, now repealed by the Maritime Conventions Act, 1911, s. 9 (3), enacted that the rules in force in the Court of Admiralty should be applied in all cases arising out of a collision between two ships, if both ships were found to blame, and the law as to the incidence of loss became the same in all the Courts (b).

Judicature
Act.

The rule prevailed in some, but not in all, the colonies and dependencies of Great Britain. In Canada it was applied in 1880 by statute (c), in the common law as well as

Colonial law.

see *The Bernina* (1887), 13 App. Cas. 1; *The Frankland*, (1901) P. 161, 167; and *supra*, p. 111, note (o), as to the authority of *The Milan*. The question as to the right of an innocent owner of cargo to recover no more than part of his loss appears to have been finally settled in *The Drumlanrig*, *ubi supra*, and is now governed by sect. 1 of the Maritime Conventions Act, 1911.

(z) *The Voorwaarts* and *The Khedive* (1882), 7 App. Cas. 795.

(a) 25 & 26 Vict. c. 63. See further as to this, *supra*, p. 56.

(b) At the passing of the Judicature Acts the Admiralty rule narrowly escaped abolition. In the

original draft of the Act it was provided that the common law rule should prevail; but in the passage of the bill through the House of Commons the Admiralty rule was reinstated, and ultimately made the law of the land. The reasons for preferring the Admiralty to the common law rule are not apparent. It appears to have been thought that the former was more in accord with the law of foreign countries. See Hansard's Parl. Debates, 3rd ser. vol. 216, pp. 1800, 1801. A short summary of foreign laws upon the point is appended to this chapter. It will be seen that they are widely divergent.

(c) 43 Vict. c. 29, s. 8 (Canada).

Admiralty Courts. In St. Lucia it was applied where the cause of collision was unknown, where both ships were in fault, and also in the case of inscrutable fault (*d*).

It applies to all collisions, whatever the nationality of the ships, and wherever the collision occurs.

The rule applied to all collisions, whatever the nationality of the ships, and wherever the collision occurs. Thus it has been applied where both the ships were British (*e*); both foreign (*f*); one British and one foreign (*g*); where the collision was in British waters (*h*); in foreign waters (*i*); and on the high seas (*k*). And, as stated above, it applied whether the action was in Admiralty or in a Court not having Admiralty jurisdiction (*l*). Whether the rule was *lex loci* or *lex fori* does not appear to have been decided. No question has been raised in any case as to its universal application. In the Court of Admiralty it was administered as part of the law maritime; though it is doubtful whether it ever formed part of any general system of maritime law.

The loss is apportioned in equal shares, whatever the degree of fault in each ship.

As has been already stated, the law apportioned the loss where both ships were in fault by obliging each wrong-doer to pay half the loss of the other. Thus, if the loss on ship A. was 1,000*l.* and that on B. was 2,000*l.*, A. could recover 500*l.* against B., and B. could recover 1,000*l.* against A. The Courts made no attempt to administer distributive justice by apportioning the loss according to the degree of fault of

(*d*) Civil Code of St. Lucia (1876), Art. 2360. "If the cause of collision be unknown, or it be impossible to determine by whose fault it was caused, or if both ships are in fault, the damages are borne in equal portions by both ships."

(*e*) *The R. L. Alston* (1883), 8 P. D. 5; *The Monte Rosa*, (1893) P. 23; *The Vera Cruz* (1884), 9 P. D. 88, 96.

(*f*) *The North American and The Tecla Carmen* (1858), Lush. 79; *Chartered Mercantile Bank of India, &c. v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521; *The Washington* (1841), 5 Jur. 1067; *The Monarch* (1840), 1 W. Rob. 21.

(*g*) *The Voorwaarts and The Khedive* (1881), 7 App. Cas. 795; *Chapman v. Royal Netherlands, &c. Co.* (1879), 4 P. D. 157; *The Rona and The Ava* (1874), 2 Asp. M. C. 182; *The Vera Cruz* (1884),

9 P. D. 88; *The Seringapatam* (1849), 3 W. Rob. 38.

(*h*) See note (*e*), above.

(*i*) *Hay v. Le Neve* (1824), 2 Shaw's (Sc.) App. Cas. 395; the collision was in Scotland.

(*k*) *The Rona and The Ava* (1874), 2 Asp. M. C. 182. In *The Monarch* (1840), 1 W. Rob. 21, the collision was "at sea"; in *The Washington* (1841), 5 Jur. 1067, off Berry Head; in *The Seringapatam* (1849), 3 W. Rob. 38, off Beachy Head.

(*l*) It was held by the Queen's Bench Division to be applicable in the case of a collision between Singapore and Sourabaya between two ships belonging to the same owners, British subjects, but registered under a foreign flag: *Chartered Mercantile Bank of India, &c. v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521.

which each ship was guilty (*m*). “Until the case of *Hay v. Le Neve* . . . there was a question in the Admiralty Court whether you were not to apportion it (the loss) according to the degree in which they (the two ships) were to blame. But many years ago the rule of the Admiralty was settled, that if there is blame causing the accident on both sides they are to divide the loss equally; just as the rule of law is, that if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls” (*n*). The principle of the rule was said to be equality of participation in a loss arising from a common fault (*o*).

By the Maritime Conventions Act, 1911, the equal division of loss in all cases was abolished, and by sect. 1 it is enacted:—

Maritime
Conventions
Act, 1911
(1 & 2 Geo. 5,
c. 57).

1.—(1) Where by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault: Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
- (b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and
- (c) Nothing in this section shall affect the liability of any

(*m*) *Trew v. Peirce*, *The Mary of Poole* and *The Mary of Weymouth*, Ad. Ct. 7th July, 1692, *infra*, p. 162; *The Petersfield* and *The Judith Randolph* (1789), cited in the next case; *Hay v. Le Neve* (1824), 2 Shaw's (Sc.) App. Cas. 395, and see the cases mentioned below, pp. 156 *seq.*; *per* Lord Blackburn, *The Khedive* and *The Voorwaarts* (1881), 7 App. Cas. 795, 808; *The Margaret* (1884), 9 P. D. 47, 51; *The Meteor* (1875), Ir. Rep. 9 Eq. 567. The dictum of Lord Campbell in *The Friends* (1842), 4 Moo. P. C. 314, 322, to the effect that the loss may be apportioned according to the degree of fault in each ship, is without authority. As to the law in

America on this point, see *infra*, p. 153, note (*n*).

(*n*) *Per* Lord Blackburn, *Cayzer v. Carron Co.* (1883), 9 App. Cas. 873, 881.

(*o*) See *per* Lord Stowell in *The Woodrop Sims* (1815), 2 Dods. 83; *per* Lord Selborne, C., in *The Voorwaarts* and *The Khedive* (1881), 7 App. Cas. 795, 801. See also *The Lima* (1858), 4 Jur. N. S. 147; *The Aurora* (1860), Lush. 327; *The Seringapatam*, 5 Not. of Cas. 66; *The Celt* (1832), 3 Hag. 328; and *per* Lopes, L. J., *The Bernina* (1887), 12 P. D. 58, 95 (joint liability for joint negligence). See, however, *infra*, pp. 156 *seq.*, for other reasons given for the rule in early cases.

person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Act, the expression freight includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Scope of the
Act.

The Act applies to proceedings in all Courts and to all vessels, and by sect. 10 is to be construed as one with the Merchant Shipping Acts, 1894 to 1907. A vessel is defined by sect. 742 of the Merchant Shipping Act, 1894, as including "any ship, boat, or other description of vessel used in navigation." Therefore the liabilities arising from contact between a "vessel" and a pier or other fixed object, or a craft or other floating object, not within this definition are not affected. A gas float used as a floating beacon, though capable of being moved on the face of the waters (*p*), a non-descript square craft used in dredging (*q*), and an electric launch in which passengers were taken for hire on an artificial lake three feet deep (*r*), have been held not to be "vessels used in navigation." In the preamble the Act is declared to be enacted because conventions have been signed, and it is desirable to amend the law relating to merchant shipping, to enable effect to be given to the conventions. The Act would, therefore, seem not to apply to King's ships. The Crown is not mentioned in the Act, but it is possible that the provisions of sect. 1 at any rate may be treated as part of the *lex fori* and applied in the case of a collision between a King's ship and a merchantman. The Act applies to all waters, and its application is not limited to waters navigable by sea-going vessels where the Collision Regulations are in force (*s*).

(*p*) *Gas Float Whitton* (No. 2), (1897) App. Cas. 337; *The Upcerne*, (1912) P. 160.

(*q*) *The Blow-boat*, (1912) P. 217.

(*r*) *Southport Corporation v. Morris*, (1893) 1 Q. B. 359.

(*s*) Preliminary Article, Regulations, p. 312.

The Act is not apparently limited to cases of actual contact between vessels causing damage (*t*). The words of sect. 1 are wide enough to cover any damage caused by the fault of a vessel (*i.e.*, of her owner or those in charge of her) to any other vessel (*i.e.*, to those interested in her or her cargo or freight), but will, it is submitted, be limited to cases of damage within the terms of the convention relating to collisions referred to in the preamble. The extension of the rule of division of loss to cases where there has been no actual collision was undertaken in the convention, Art. 13 of which refers to damage whether caused "by the execution or non-execution of a manœuvre, or by the non-observance of the regulations, even if no collision had actually taken place" (*u*).

Cases in which it applies.

The Act contains no definition of fault, and it is submitted that the intention of the Act is not to alter the law as to what acts cause vessels to be held partly to blame for damage done, but only to change the proportions in which the loss has to be borne in cases of unequal blame. As we have seen in Chapter I., for two ships to be held to blame both must be guilty of negligence contributing to the loss (*x*). But the common fault, or rather the acts of negligence committed by the ships respectively, need not, it seems, be both faults contributing to the collision. Thus a schooner at anchor, whose sole fault consisted in having her anchor suspended from her hawse in a position likely to do damage if a collision occurred, was held liable for half the loss suffered by the other vessel, a dumb barge, that negligently went foul of the schooner, and was pierced and sunk by the schooner's anchor (*y*). Nor is it necessary that there should be a collision, in the sense that one or both ships must be under way. A steamship and a dumb barge were moored at the same buoy. The fluke of the steamship's anchor, which was im-

(*t*) In *The Cairnbahn*, (1914) P. 25, Lord Parker of Waddington expressed the opinion that sect. 1 was not confined to collision cases, and in the same case it was pointed out that where doubt existed as to the interpretation of the Act the conventions could be referred to.

(*u*) The English translation of M.

the text of the Collision Convention is printed *infra*, p. 550.

(*x*) *The Frankland* (1872), L. R. 4 P. C. 529, 533; *The Rona* and *The Ava* (1874), 2 Asp. M. C. 182; *Cayzer v. Carron Co.* (1884), 9 App. Cas. 873.

(*y*) *The Margaret* (1881), 6 P. D. 76.

properly hanging from the hawse pipe, holed and capsized the barge, as the steamship rose in the water in consequence of her cargo being discharged. The barge had been negligently left with no one on board her, and the damage might have been avoided by slacking her headfast. Both steamship and barge were held in fault, and the loss divided (*z*). So where (*a*) the negligence of one ship consisted in not beaching the injured craft after the collision, and where (*b*) the plaintiff, though not in fault for the collision, might have lessened the consequent loss, the damages were divided. Damages have also been divided in the case of a collision between a ship being launched and another under way, where the fault in the former was committed by the people ashore in starting her on the ways at an improper moment (*c*).

The Act applies where the two ships are not in collision.

Whether the former rule applied where the two ships were both in fault for the collision, but the collision was not between themselves, was not clear. But the words of sect. 1 of the Maritime Conventions Act, 1911, cover the case. There is nothing in the section about the two vessels at fault being themselves in collision with each other, so that where one of two vessels comes into collision with a third vessel, both the vessels at fault are liable for a proportion of the damage caused; the rule that there is no right of contribution between joint tortfeasors does not apply, and one guilty vessel who has paid the damage she has caused can recover the adjudged proportion of what she has paid and of the damage to herself from the other guilty vessel (*d*). Similarly, it is submitted, that where three ships are in fault for a collision between two of them, the loss will be divided between all three (*e*).

Where the ship in collision is in tow.

The application of the rule where one of the ships in collision is in tow, and both are in fault, has not been fully considered in this country. It seems that, whether the ship

(*z*) *The Dunstanborough*, (1892) P. 363, note. It is difficult to reconcile this case with *The Monte Rosa*, (1893) P. 23. Cf. *The McCallum* and *The Odette*, 7 Duval (Canada), 36.

(*a*) *The Scotia* (1890), 6 Asp. M. C. 541; dist. *The Hornet*, (1892) P. 361.

(*b*) *The B. & C.*, 18 Fed. Rep. 543.

(*c*) *The United States* (1865), 12 L. T. 33.

(*d*) *The Cairnbahn*, (1914) P. 25. In *The Frankland*, (1901) P. 161, is a dictum to the same effect under the old rule.

(*e*) There is no precedent for such an extension of the former rule in this country, but in America the loss is so divided: *The Paquete*, 25 Fed. 488.

in tow, or her tug, is alone in fault, or whether both tow and tug are in fault, the tow is, in a case of ordinary towage, liable for half of the damage to the third ship (*f*).

A barque in tow sank or injured a third ship. An action *in rem* was brought against the barque and her tug. Judgment by default for 4,146*l.* 10*s.* 2*d.*, the amount of the loss on the third ship, went against the barque. The action proceeded against the tug, and judgment given that both tug and third ship were in fault. It was held that the tug owners were liable for 2,073*l.* without deducting therefrom, as they claimed, a sum of 855*l.* 5*s.* 1*d.*, the net proceeds of the sale of the barque, which had been paid out of Court to the plaintiffs (*g*).

In place of the former rule under which losses were in all cases equally divided, the Maritime Conventions Act, 1911, enacts that the liability to make good damage and loss (*h*) shall be in proportion to the degree in which each vessel is in fault, with the proviso that if, having regard to all the circumstances of the case, it is impossible to establish the degree of fault, the liability shall be apportioned equally (*i*). The fault to the degree of which liability is to be proportional must be fault causing or contributing to the collision (*k*). If the evidence is such that the blame cannot be with any certainty apportioned, the liability should be apportioned equally, but the decision of the judge of first instance should not be lightly interfered with by the Appellate Court (*l*). In this case the trial judge found both vessels to blame, one much more than the other, and apportioned the liability at four-fifths and one-fifth. The Court of Appeal, affirmed by the House of Lords, varied this decision and apportioned the liability equally. Where both vessels were in fault for excessive speed in a fog, but where the "initial fault" lay with the defendants, they were condemned to pay sixty per cent. of the total damage caused

Liability in proportion to fault.

(*f*) *The Englishman and The Australia*, (1894) P. 239, where the collision was between tug and third ship.

(*g*) *The Morgengry and The Blackcock*, (1900) P. 1.

(*h*) What can be recovered as damages has been considered in

Chapter V., *supra*, p. 117 *seq.*

(*i*) 1 & 2 Geo. 5, s. 1, *supra*, p. 143.

(*k*) *The Peter Benoit* (1915), 84 L. J. P. 87, *per* Pickford and Bankes, L. JJ.

(*l*) *Ibid.*; *affd.* (1915), 13 Asp. M. C. 203.

by the collision and the plaintiffs to pay the other forty per cent. (*m*). The owners of cargo upon a vessel adjudged entitled to recover three-fourths of her damage from another vessel jointly to blame for the collision, can recover no more than three-quarters of the damage to their cargo from the other vessel (*n*). Sect. 1 of the Act incorporates the doctrine of *The Milan* (*o*) and *The Drumlanrig* (*p*) upon this point, save as to the proportions of the division of loss.

Application of the former rule where liability is limited.

The Voorwaarts and *The Khedive*.

The application of the Admiralty rule produced singular results where one or both ships limited their liability under the Merchant Shipping Acts. Two ships, *The Voorwaarts* and *The Khedive*, having been in collision, the owners of *The Voorwaarts* brought an action *in rem* in the Admiralty Division against the owners of *The Khedive*, who counter-claimed for the amount of the loss suffered by their own ship (*q*). Both ships were held in fault for the collision. The owners of *The Khedive* brought an action in the Admiralty Division to limit their liability and paid the amount of their statutory liability into Court. The damage to *The Voorwaarts* was greater than that to *The Khedive*, and the fund in Court was not sufficient to satisfy all the claims for which the owners of *The Khedive* were answerable. It was held by the House of Lords (*r*), overruling a previous decision of the Court of Appeal (*s*), that the owners of *The Voorwaarts* were entitled to prove against the fund in Court for a moiety of their loss, less a moiety of the loss of *The Khedive*, and to be paid out of the fund in respect of the balance *pari passu* with the other claimants. By the decision of the Court of Appeal (*s*), it had been held that

(*m*) *The Rosalia*, (1912) P. 109.

(*n*) *The Umona*, (1914) P. 141, 145.

(*o*) (1860), Lush. 388.

(*p*) (1911) App. Cas. 16.

(*q*) *Stoomvaart Maatschappij Nederland v. Peninsular and Oriental Steam Navigation Co.* (1882), 7 App. Cas. 795.

(*r*) Lord Brimwell (in an opinion which was written by him, but not delivered; see 7 App. Cas. note, pp. 826, 827) points out that some of the results following from the decision of the House of Lords are of doubtful equity or justice; that by it the owners of *The Voorwaarts*

were as well off as if their ship were blameless. And Baggallay, L. J. (4 P. D. 170), points out that the loss to the owners of *The Khedive* was the same as if their ship were alone in fault. Thus, where both ships are in fault, and one limits her liability under the statute, her owners, inasmuch as they lose the right to recover damages against the other ship, are indirectly answerable in damages to a greater amount than the statutory limit.

(*s*) *Chapman v. Royal Netherlands Steam Navigation Co.* (1879), 4 P. D. 157.

the ship proving against the fund in Court was entitled to prove for half her loss, without deducting anything in respect of her liability to the other ship.

The question to be decided was whether in such cases there are two liabilities in damages, one on the part of each shipowner to the other shipowner for half the loss of the latter, or only one liability, namely, a liability on the part of the owner of the ship that had done the greater damage, for the difference between half the loss of the one ship and half the loss of the other—in the words of Lord Selborne, “a moiety of the excess of the aggregate loss beyond the point of equality.” It was held that the terms in which the rule of the Admiralty was laid down in *The Woodrop Sims*, *The Lord Melville*, *The Petersfield*, *The Judith Randolph*, and *Hay v. Le Neve*, showed that in substance there was but one action and one final judgment; and that such final judgment was for the balance between a moiety of the loss of the one and a moiety of the loss of the other. The later cases of *The Washington* and *The Catherine (t)*, *The Serin-gapatam (u)*, and *The Tecla Carmen (x)*, were cited as confirming this view.

The effect of this decision will be best seen by an illustration. Let the loss on ship A. be 10,000*l.*, the loss on ship B. 20,000*l.*, the loss on cargo on board B. 40,000*l.*, and the statutory liability of A. 24,000*l.* According to the decision of the House of Lords the owners of B. are entitled to judgment for £5,000, viz.: £10,000, half their loss, less £5,000, half the loss of A. The cargo-owners being entitled to half their loss, the total provable against the fund in court is £25,000, and B.'s £5,000 being one-fifth of the total, her owners recover £4,800, one-fifth of £24,000. In practice the proportions are seldom so simple, but the above facts sufficiently illustrate the existing law, the main feature of which is that the higher claim, less the opponent claim, is

(t) (1851), 5 Jur. 1067.

(u) (1849), 3 W. Rob. 38, 44.

(x) (1858), Lush. 79. To these may be added the early cases of *Williams v. Marten* and *Rennen v. Humble*, Ad. Ct. 1675 and 1698, where the sentence was in terms

for the balance of loss. See *infra*, p. 162. In Holland the same decision was arrived at in a case mentioned in Bynkershoek, *Quæst. Jur. Priv.* l. 4, c. 21. See also *The Sapphire*, 18 Wall. 51; *The Manitoba*, 15 Davis, 97.

recoverable against the fund in Court. Another result of the decision of the House of Lords is that, where the loss on each ship is the same, and each ship limits her liability, the whole of the sum paid into Court is divisible between the owners of cargo on board the two ships, whilst the shipowners get nothing.

Right of insured under running-down clause.

It followed from the above decision that where both ships were to blame there arose, not cross liabilities, but a single liability for a balance upon the owners of the ship that had sustained the smaller damage; and therefore the shipowners to whom the balance was payable were not entitled, whether on behalf of themselves or of their underwriters on ship, to recover against underwriters who had agreed to indemnify them against "loss or damage to any other vessel," they being under no liability in respect of such loss or damage (y).

Has the Maritime Conventions Act, 1911, altered the rule of one liability?

The words of sect. 1 of the Maritime Conventions Act, 1911, are "the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was at fault." Now, as we have seen above, the effect of the decisions on the old Admiralty rule is that in cases where liability is limited under the Merchant Shipping Acts and losses are unequal, it may happen that neither of the vessels to blame makes good in proportion to her degree of guilt; she may have to pay as much as if she were solely to blame, or as little as she would if she were blameless. Under the former rule the form of judgment used has long been that the defendant should pay a moiety of the plaintiff's claim and the plaintiff a moiety of the defendant's counterclaim, but only the difference between the claim and the counterclaim was paid, as the rule imposed only one liability. The Maritime Conventions Act, 1911, has repealed sub-sect. 9 of sect. 25 of the Judicature Act and in place of the old rule enacted that the liability to make good, *i.e.*, to pay, losses shall be in proportion to the fault of each vessel, and it is submitted that this enactment may be construed as imposing a liability on each vessel, unless proviso (c) to sub-sect. (1)

(y) *The London Steamship Assurance Association v. The Germanian Steamship Co.* (1890), 24 Q. B. D. 32; on appeal, *ibid.* 663.

of sect. 1 preserves the old rule of one liability. That proviso provides that nothing in the section shall be construed as imposing any liability upon any person from which he is exempted by any provision of law. It is submitted that a decision based on the terms of the superseded rule is not a provision of law exempting a person from liability (z).

Before January 1st, 1918, when sect. 15 of the Pilotage Act, 1913 (a), came into operation, where two ships, A. and B., were both in fault for a collision, and the fault of B. was entirely that of the compulsory pilot (b) in charge of her, the owners of B. could recover half their loss against A., whilst the owners of A. could recover nothing. Her owners were not liable at law, and no damage lien attached to the ship. But the fault of the pilot affected the owners of B., and the owners of cargo on board her, to this extent: it brought into operation the rule as to division of loss, and prevented them from recovering more than half their loss (c). Moreover, though successful upon their defence of "compulsory pilot," they obtained no costs (d). In the case last mentioned the owners of the ship in charge of the compulsory pilot were entitled to judgment for half their loss, without deducting anything on account of the loss of the other ship. The principle of the decision in *The Khedive* (e) did not apply in such a case.

Division of loss where one ship is in charge of a compulsory pilot.

The case of *The Hector* (f), in which these points were decided, was as follows:—A collision occurred between *The Augustus* and *The Hector*, caused by the fault of the crew of *The Augustus* and the fault of the compulsory pilot of *The Hector*. The rule as to division of loss was applied. The loss of *The Augustus* was 3,000*l.*; that of *The Hector* 8,000*l.* It was contended that the owners of *The Hector* could recover only 2,500*l.* (i.e., half her loss, namely, 4,000*l.*

(z) The reasons given in *The Cairnbahn*, (1914) P. 25, for the decision in that case support this construction of the proviso.

(a) 2 & 3 Geo. 5, c. 31.

(b) See below, p. 236, as to compulsory pilotage.

(c) *The Hector* (1883), 8 P. D.

218. That the owners of cargo on board B. can recover only half their loss follows from *The Milan* (1860), Lush. 388.

(d) *The Rigborgs Minde* (1883), 8 P. D. 132.

(e) (1882), 7 App. Cas. 795.

(f) (1883), 8 P. D. 218.

less 1,500*l.*, half the loss of *The Augustus*); that this resulted from the decision in the case of *The Khedive* (*g*), considered with reference to the Merchant Shipping Act, 1854 (*h*), s. 388. The Court of Appeal declined to apply the principle of the decision in *The Khedive*, a case where the owners of both ships were liable, to the case before them, in which the owners of only one ship were liable (*i*).

Cargo-owners
not bound by
shipowners'
agreement of
both to blame.

An agreement between the shipowners that both ships, A. and B., were in fault, does not prevent the owner of cargo on board B., in an action by the owner of A. to limit his liability, from asserting that A. was alone in fault; and he is entitled to an issue upon that question (*k*).

Collision
between ships
of the same
owner; rights
of owners of
cargo.

The rule as to division of loss where both ships are in fault has been held to apply where a cargo-owner was suing the shipowner for loss incurred in a collision between the carrying ship and another ship belonging to the same owners, caused by the fault of both ships (*l*). The shipowner was protected from liability for the negligence of those in charge of the carrying ship by the terms of the bill of lading. It was held that he was nevertheless liable in tort (*m*) for the negligence of those on board the other ship; but his liability was for half only of the loss; in respect of the other half of the loss, it was held that he was relieved by the bill of lading. The right to this relief under the present law is preserved by proviso (c) to sub-sect. (1) of sect. 1 of the Maritime Conventions Act, 1911.

The rule gives
and also takes
away or
abridges a
remedy.

It follows from the above considerations that the statute directing division of loss does not merely impose a restriction upon the common law doctrine of contributory negli-

(*g*) *Stoomvaart Maatschappij Nederland v. P. & O. Steam Navigation Co.* (1882), 7 App. Cas. 795.

(*h*) 17 & 18 Vict. c. 104.

(*i*) The dictum of Brett, L. J., in *Chapman v. Royal Netherlands Steam Navigation Co.* (1879), 4 P. D. 157, 184, to the effect that the phrase, "answerable in damages" in sect. 54 of the Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), is applicable to the last stage of the litigation

between the ships, that is, to half the difference between the losses on the two ships respectively, cannot, after this decision, be supported.

(*k*) *The Karo* (1888), 13 P. D. 24.

(*l*) *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521.

(*m*) Cf. *Hayn v. Culliford*. (1878), 4 C. P. D. 182.

gence. It not only gives a remedy where by the common law there is none, but it also abridges a right which formerly existed at law, but now does not. When both ships were in fault, the innocent owner of cargo on board either ship could formerly, in a common law action for tort, have recovered the whole of his loss against the owners of either ship. In Admiralty he could recover no more than part of his loss against the owner of the other ship (*n*); and the

Cargo-owner
can recover
only half his
loss in tort.

(*n*) *The Milan* (1860), Lush. 388. So also in Canada: *The Eliza Keith* and *The Langshaw*, 3 Quebec L. R. 143. *Qu.* whether these cases are affected by *The Bernina* (1887), 12 P. D. 58, 83; *The Frankland*, (1901) P. 161, 167.

The American Courts have not followed *The Milan*: see *The Britannic*, 39 Fed. Rep. 395; *The Atlas*, 3 Otto, 302; *The Juniata*, *ibid.* 337; *The New York*, 175 U. S. Rep. 187. It is held that the cargo-owner is entitled (subject to the statutory limitation of the shipowner's liability) to recover the whole of his loss against one or other, or both, of the shipowners. In the first instance the decree goes against each shipowner for half the loss; but each shipowner has a remedy over against the other in respect of any balance of the damages which the latter fails to discharge: see *Coombs v. Duncan*, 1 Fed. Rep. 733; *The Doris Eckhoff*, 41 Fed. Rep. 156. This applies also to damages for loss of life or personal injury, where such damages are recoverable: *The Max Morris*, 30 Dav. 1. But if one of the shipowners, pending suit, purchases at an undervalue the claims of his cargo-owners, he cannot prove against the other ship for more than the price he paid for such claims: *The Portia*, 64 Fed. Rep. 811. In *The Victory* and *The Plymothian*, 68 Fed. Rep. 395, where the fault of *The Victory* was greater than the fault of *The Plymothian*, the decree went against *The Victory* for her full value, though it was more than half the value of the cargo lost in *The Plymothian*, and against *The Plymothian* for the balance. On appeal, however, the Supreme Court varied this decree by finding *The*

Victory alone in fault: S. C. on app., 168 U. S. Rep. 410.

In *The Mary Ida*, 20 Fed. Rep. 741, the damages were apportioned between the two ships in the ratio of three to one, according to the degree of fault in either ship. Whether this case would be upheld by the Supreme Court seems doubtful. See *The Maling*, 110 Fed. Rep. 227; *The David Dows*, 16 Fed. Rep. 154. In *The Hercules*, 20 Fed. Rep. 205, the owner of one of the ships, against whom his cargo-owners had recovered full damages, was allowed to deduct half the amount from the damages payable by him to the owner of the other ship.

The cargo-owner is entitled to full indemnity, and is in no case liable for loss on the other ship; not even when he is owner of ship as well as of the cargo in her. And in the same case, and for like reasons, he cannot set off his loss on cargo against damages payable by him in respect of injury to the other ship: *The Bristol*, 29 Fed. Rep. 867.

Where the two ships are both in fault for collision with a third, they are jointly and severally liable; and if one only is sued, the decree goes against her for the whole of the damages: *The Atlas*, 3 Otto, 302; *The Charles Allen*, 11 Fed. Rep. 317; but there is a right of contribution between them; and either, if sued separately, may apply to bring in the other: see *infra*, p. 217.

The rule as to division of loss has a wider application in America, and is not confined to the case of collision, and has been applied where a ship was lost ashore by the fault of her tug and third parties: *The Young America*, 26 Fed. Rep. 174.

rule is now the same at law (*o*). In an action upon the contract of carriage, the rule as to division of loss has no application. The cargo-owner can, subject to the terms of the bill of lading, recover full damages (*p*).

The rule not applicable in case of joint tort-feasors.

Actions under Lord Campbell's Act lie for personal injuries.

The rule of division of loss does not apply where two ships are to blame for a collision with a third; in such a case she can recover her whole loss from either or both (*q*).

The Admiralty rule did not apply to actions under Lord Campbell's Act; consequently the plaintiff, if not himself in fault, could, although both ships were in fault, recover full damages. The High Court of Admiralty had no jurisdiction to entertain these actions, and the Judicature Act, 1873, s. 25, sub-sect. 9, did not apply the rule of division of loss to them (*r*).

The rights of parties claiming under Lord Campbell's Act and for personal injuries, and of shipowners against whom such claims are made, have been enlarged by the Maritime Conventions Act, 1911. Sects. 2, 3 and 5 are as follows:—

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners (*s*) of the vessels shall be joint and several:

(*o*) Since the Judicature Acts, and now by the Maritime Conventions Act, 1911.

(*p*) *The Bushire* (1886), 5 Asp. M. C. 416; the dictum of Brett, M. R. (10 Q. B. D. 538), applies to actions in tort.

(*q*) *The Devonshire*, (1912) App. Cas. 634. *The Cairnbahn*, (1914, P. 25, is an instance of such a case since the Maritime Conventions Act, 1911, came into operation. *The Avon* and *The Thomas Joliffe*, (1891) P. 7; *The Englishman* and *The Australia*, (1894) P. 239; (1895) P. 212. But see p. 201 as to the terms of the Convention.

(*r*) *The Bernina* (No. 2) (1887), 11 P. D. 31; 12 P. D. 58; H. L., *nom. Mills v. Armstrong* (1887), 13 App. Cas. 1. In *The Vera Cruz* (No. 1) (1884), 9 P. D. 88, Butt, J., applied the rule in such an action where the proceedings were *in rem*. This part of his judgment was rendered inoperative by the

Court of Appeal holding that there was no jurisdiction *in rem* under Lord Campbell's Act (9 P. D. 96). As to actions for personal injuries, see *The Circe*, (1906) P. 1, and an Irish case *contra*, *Boucher v. The Clyde Shipping Co.* (1904), 2 Ir. Rep. 129. As to the law in America, see *Belden v. Chase*, 43 Dav. 674, 691; *The Queen*, 40 Fed. Rep. 867 (seamen, common employment); *The Max Morris*, 30 Dav. 1 (personal injuries). The rules as to contributory negligence have, it is held, no application in a Court of Admiralty, which decides according to equity and conscience. Thus, although a person injured on ship-board, partly by his own fault, does not recover full damages, he recovers his hospital bill and loss of wages: *The Explorer*, 20 Fed. Rep. 135; *The Wanderer*, *ibid.* 140.

(*s*) "Owners" is defined by sect. 9 (4).

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

3.—(1) Where loss of life or personal injuries are suffered by any person on board owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which these vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason be recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

5. Any enactment which confers on any Court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought in rem or in personam.

The liabilities of the owners of two vessels both partly to blame being declared joint and several, the rule of division of loss enacted in sect. 1 does not apply to claims in respect of death or personal injury; actions to enforce such claims must be commenced within two years (*t*). The proviso to sect. 2 would appear to preserve the right of the persons sued to set up the defence of contributory negligence.

Though the owners of two vessels partly to blame are each liable as joint tort-feasors, they are given a right of contribution between themselves when neither had a defence

(*t*) Maritime Conventions Act, 1911, s. 8. See *supra*, p. 133.

to the original action. If, for instance, a seaman who could not recover against the owners of the ship on which he is serving, by reason of such a defence as common employment, successfully sues the owners of the other ship partly to blame for his injuries, the owners of the other ship cannot obtain contribution from the owners of the ship on which he is serving. Claims for contribution can be enforced by action *in rem* by virtue of sub-sect. (2) of sect. 3. Claims for loss of life or personal injury can now be brought *in rem* in any court having Admiralty jurisdiction in damage. This is a material alteration of the law, and it would seem that such a claim could now be made *in rem* in a County Court (u). The jurisdiction of County Courts is limited to "collisions" between "ships." The Maritime Conventions Act, 1911, applies not only to "ships," but to "vessels," and possibly to cases where there has been damage, but no collision (x). The language of sect. 5 can be construed as giving a right of action *in rem* in County Courts in respect of claims for death or injuries arising from a collision between vessels, in which case, when the "vessels" were not also "ships," damage claims arising from the same collision could not be entertained, or it can be construed as giving jurisdiction in death and injury claims, only in cases in which the County Court has already jurisdiction in damage claims. The latter interpretation, it is submitted, is the better, as well as the more convenient.

NOTE.

History of the Rule as to Division of Loss.

A provision for sharing or distributing loss to ships and cargoes arising from collision is contained in many of the codes of maritime law from the Rolls of Oleron to the present day. Some early codes are said to date from the thirteenth century; but most, if not all, of them are founded upon the Oleron Code.

(u) The Admiralty jurisdiction of County Courts has hitherto been limited by the County Court Admiralty Jurisdiction Acts, 1868 and 1869 (31 & 32 Vict. c. 71, and

32 & 33 Vict. c. 51). See Williams and Bruce's *Admiralty Practice*, 3rd ed. pp. 240—248, and *infra*, p. 287.

(x) See *supra*, p. 145.

The best known is the Code of Wisby, a town in Gottland, and an important centre of commerce in the thirteenth and fourteenth centuries. This code was printed in 1505, and an English translation is contained in the "Dominion of the Sea" (ed. 1705). The Wisby Code.

The provision in the Wisby Code, and in the other codes of northern Europe, usually takes the form of a special enactment for the case of collision between a ship anchored or moored in harbour and another under way coming into the harbour. In such a case the ship under way is required to make good the whole of the damage to the ship brought up, unless her master and crew, as in the Oleron Code, swear that the collision was accidental, in which case she is to pay only half the loss. The provision occurs in the laws of Wisby (Pardess. i. 401, 501; iii. 114, 361; Black Book, Rolls Ser. iv. 87, 125, 284); of Hamburg (Pardess. iii. 345, 348); Riga (Pardess. iii. 506); Lubeck (Pardess. iii. 402; Black Book, iv. 373); Dantzic (Black Book, iv. 435); Bruges (Black Book, iv. 435); Damme (Pardess. i. 379); of the Hanseatic League (Pardess. ii. 551); and of the Netherlands (Pardess. iv. 34, 85); and in some of these codes it is not confined to the case of one of the ships being at anchor.

The language of the different codes varies as to details, and the effect of the rule is modified in different ways. Thus, the Hamburg Code provides that the limit of liability shall be the value of the ship that does the damage and her apparel; and, further, that the cargo-owner shall in no case be liable. The Netherlands and Hanseatic Codes expressly provide that, if the ship under way is herself damaged, she shall bear her own loss; and this is implied in other codes. The Hanseatic Code is not clear as to the shares in which the loss on the ship at anchor is to be borne, and in certain cases it is to be adjusted by arbitrators. It further provides that if a ship slips from her anchor to avoid another driving on her, the loss of anchor and cable is to be general average. This provision seems to be the basis of the decision in the great case of *Bury v. Gold*, *infra*, p. 160. The Wisby, Hanseatic, and the Netherlands Codes contain special provisions as to damage done by unbuoyed anchors—a fruitful source of mischief in the shallow and dry harbours of northern Europe. If the unbuoyed anchor damaged another ship, the ship it belonged to had to pay the whole of the loss; but if the buoy had been accidentally carried away, she paid half only. The Hamburg, Hanseatic, and other Codes.

Danish Codes (Pardess. iii. 237, 261, 289) of 1508, 1561 and 1683 divide the loss of an accidental collision according to the Danish Code.

Eastern codes.

decision of arbitrators; but in the case of collision between a ship under way and another at anchor, the former is to pay one-third of the loss to the latter. A similar provision occurs in a Swedish code of the seventeenth century (Pardess. iii. 129, 173). A like division of loss is adopted in a code stated to have been in force in Malacca in the thirteenth century, in case of collision in bad weather between two ships sailing in company (*voyage de conserve*) for protection against pirates. In another Eastern code the proportion of her loss recoverable by the injured ship is two-thirds (Pardess. vi. 409, 459). These codes are said to be founded on customs in force in the East. They purport to have been promulgated by Mahmoud Schah, the Mahomedan conqueror of the Eastern Islands.

Consolato del Mare.

By the *Consolato del Mare*, the code in use in the south of Europe, the ship under way is to pay the whole of the loss of the ship at anchor or moored, unless the collision is due to stress of weather, in which case the loss is to be borne as arbitrators shall decide. If the ship at anchor shifts her moorings after the other has brought up, the latter is to pay one-half of the loss. (Pardess. ii. 174 *seq.*)

Ordonnance of Louis XIV.

By the Ordonnance of Louis XIV. the loss was divided equally in case of accidental collision. Some doubt existed as to whether it should not be apportioned as general average, but Valin states that the better opinion was in favour of an equal division. (Valin, *Sur l'Ordonnance de la Marine*, l. 3, tit. 7; Arts. 10, 11; *Ibid.* vol. ii. 178.)

Equal or proportionate division.

The vague language of the Northern codes as to the manner in which, in case of accidental collision, the loss was to be distributed, gave rise in the seventeenth century to difference of judicial opinion. Bynkershoek describes the strong dissent of his colleagues, the judges of the Supreme Court of the Netherlands, when he endeavoured to persuade them to assent to a proportionate rather than an equal division of the loss: "Memini me senatore et de geometricâ proportionē perorante reliquos senatores (23 Nov. 1629) obstupuisse atque si Jovis ignibus icti essent." (Bynk. *Quæst. Jur. Priv.* l. iv. c. 20.)

The rule of division of loss in English law.

The history of the rule as to division of loss in the English Admiralty, so far as can be gathered from existing records, is as follows. The continuous series of Admiralty Court records begins about the year 1530. During the sixteenth century no trace of the rule appears in any sentence of the Court. Once only in the sixteenth, and once in the seventeenth century awards of arbitrators are mentioned giving partial damages to the

owners of ships sunk or injured by collision (*y*). In all the cases prior to 1614, (they are not numerous,) in which sentences were delivered in collision suits, either full damages were given or none. In 1614 (*z*) occurs the first sentence for half damages. The defendant, being alone in fault, was condemned by Dr. Dunn in half the loss to cargo on board the other ship, and in the whole of the loss to the ship. This sentence was affirmed on appeal (*a*). In the same year, however, full damages are given in another case (*b*), and, apparently, again in 1623 (*c*). In 1626 (*d*) half damages are given by Sir Henry Marten against a defendant who lay at anchor in the middle of the Thames for two tides and refused to weigh his anchor, which afterwards holed the plaintiff's ship. In 1628 (*e*) Sir H. Marten gives full damages for a collision caused by the defendant's fault: also in two cases of 1632 (*f*). In 1630 (*g*) the same judge gives sentence for half damages, where the defendant's ship was alone in fault; and in the following years three other sentences to the same effect (*h*). In 1635 (*i*) there is a sentence for full damages: and two others follow, to the like effect (*k*). In 1639 (*l*) the innocent ship-owner and cargo-owner recover only half their losses; but in

(*y*) In the Admiralty Court of Ipswich during the 16th and 17th centuries collision seems to have been dealt with as a criminal offence: "Presented, the hurting of one vessel by another running against the same, and fined 2s. 6d."; Annals of Ipswich, by Nat. Bacon, ed. W. H. Richardson, 1884, p. 421; and similar entries, *ibid.* pp. 425, 539.

(*z*) *Ruckton c. Dambton*, Ad. Ct. Rec. Libels, File 16, No. 33. The ship arrested in this case belonged to the owner of the wrong-doing ship, but was not the wrong-doing ship herself. The plaintiffs had sued for the same matter in a Dutch court, and had withdrawn from the suit because judgment was given for only half their loss: Miscell. Bundles, Ser. II. bdle. 227.

(*a*) Miscell. Bundles, Ser. IV. (1613-7 bdle.).

(*b*) *Verduen c. March*, File 76, No. 463. This and the following references are to the Files of Libels, Admiralty Court Records, at the Public Record Office.

(*c*) *Cruse c. Wynne*, File 82, No. 56; *Baker c. Corditt*, File 82, No. 53.

(*d*) *Bunne c. Williamson*, File 84, No. 463.

(*e*) *Thredgold c. Goslinge*, File 85, No. 325.

(*f*) *Sneddall c. Leigh*, File 90, No. 268; *Rothwell c. Lucas*, File 90, No. 265. In these cases the collisions are stated to have been caused "*culpâ et negligentia*," or "*culpâ incuriâ et supremâ negligentia*." In another suit for negligence the loss is stated to have been caused "*culpâ negligentia, vel incuriâ, vel occasione*" of the defendant. See File 88, No. 157.

(*g*) *Rutter c. Ribatira*, File 89, No. 241.

(*h*) *Stevens c. Trehawke*, File 91, No. 27; *Clarke c. Beck*, File 92, No. 195; *St. John c. Grant*, File 92, No. 51.

(*i*) *Page c. Haslewood*, File 93, No. 243.

(*k*) *Leigh c. Ireland*, File 96, No. 153; *Gardiner c. Bright*, File 97, No. 174, where the collision is stated to have been "*de industria seu culpâ*."

(*l*) *Colthurst c. Sandall*, File 98, No. 58; *Wilkinson c. Clarke*, File 98, No. 107.

another (*m*) case of the same year the shipowner recovers full damages.

In 1642 Dr. Zouch was judge of the Admiralty. By a sentence of that year implying, but not expressly finding, fault in the defendant's ship, he gives half damages (*n*). By another sentence (*o*) of 1643, for reasons not stated—"ex certis causis nos et animum nostrum in hac parte moventibus"—out of 1,800*l.*, the full damages, he gives 400*l.* only (*p*). In this sentence the words "per crassam suam negligentiam" are struck out. The loss was caused by the defendant letting go his anchor and breaking, or fouling, that of the plaintiff's ship, whereby she drove ashore with her cargo and was damaged. In 1643 (*q*) there is a sentence in which the words "incuriâ et negligentia" are struck out, giving half damages. By another sentence (*r*) of the same year, the full damages being 680*l.*, Dr. Sames—"ex certis causis" as before—gives 320*l.* only; and by another (*s*) where the loss is 30*l.* he gives 12*l.* 10*s.* only.

In both these sentences words imputing fault to the defendant are struck out. By sentences of 1644 and 1645 full damages are given in one case (*t*), and half damages in another (*u*). In both negligence is expressly found against the defendant.

In 1647 (*x*) half damages are given, for the first time, because the cause of loss is uncertain. In the same year there is a unique case (*y*) where, no fault being found in either ship, the owners of the ship that sank, and the owners of cargo on board her, recovered, by twenty separate sentences, half their respective losses by way of general average contribution against the owners

(*m*) *Seagars c. The Haddock*, File 101, Nos. 37, 161. In this case the owner of cargo on the innocent ship had recovered full damages against the shipowner upon the bill of lading.

(*n*) *Kedâye c. De Frances*, File 106, No. 29.

(*o*) *Kinge c. Johnson*, File 106, No. 121. The same words are used in a sentence for *pro ratâ* freight, File 106, No. 79.

(*p*) Partial damages seem to have been sometimes given by arbitrators. Thus, in 1687, there is an award that the loss was caused as to one-third by ship A., as to one-third by stress of weather, and that the remaining third should be paid by the defendant, "the aggressor and moving cause," File 123, No. 151.

(*q*) By Dr. Sames, surrogate for Dr. Zouch. *Belitha c. Burwood*, File 106, No. 194.

(*r*) *Blowers c. Starlinge*, File 106, No. 227.

(*s*) *Powell c. Trevyne*, File 107, No. 34.

(*t*) *Creame c. Yazley*, File 107, No. 68.

(*u*) *White c. Walker*, File 107, No. 189.

(*x*) By Drs. Clerk and Exton, Commonwealth Judges: *Grube c. Stagg*, File 108, No. 342.

(*y*) *Bury c. Gold*, File 108, Nos. 350 *seq.* These sentences were varied on appeal by consent, by substituting half for full damages. See one of the sentences of the Delegates printed in Marsden's Admiralty Cases, p. 235.

of the other ship. The collision was at sea, and the defendant's ship was held fast to the plaintiff's by the anchor of the latter, which had holed her. In order, as the sentence states, to save the defendant's ship, her crew cut her clear by severing her cable and sending the plaintiff's ship adrift, whereupon she sank with her cargo. In the next year (1648) (z) half damages are given for an anchor and cable lost through the other ship chafing it—not, as it appears, by negligence—the word “incuriâ” being struck out of the sentence. But in the same year a ship recovers full damages for her loss by striking upon the other ship's unbuoyed anchor (a); and four sentences for full damages against defendants' ship, alone in fault, follow (b). In 1654 (c) a defendant is dismissed because no fault is proved against him; and against a defendant in fault full damages are given (d).

Next year (e) (1655) half damages are given for a collision caused without fault, and also where the cause is uncertain (f). In 1659 (g) a ship damaged by an unbuoyed anchor recovers half her loss; and in 1663 (h) a like sentence is passed with an express finding that the collision was caused by stress of weather, and that both ships had done all they could to avoid it. But for loss caused by the fault of the defendant full damages are given (i).

In 1664 Dr. Exton, in two cases where the collision was accidental—“casu fortuito”—gave half damages (k); and in 1668, where a ship with her keel accidentally cut the cable of another, Sir Leoline Jenkins gave half the value of the lost anchor and cable (l). In 1673 (m) nautical experts—*consilium artis nautice peritorum*—are for the first time mentioned. They concur in a sentence finding the defendant ship alone in fault, and the judge,

(z) *Pooty c. Rudd*, File 109, No. 118.

(a) *Knott c. Foulquier*, File 109, No. 119.

(b) *Arthur c. Ford*, File 110, No. 82; *Slaney c. Hopwood*, File 110, No. 80; *Crandley c. Porteer*, File 109, No. 313. There was an appeal in this case; with what result does not appear: S. P. Dom. Calendar, 1650, p. 359; *Brake c. The Piper*, File 111, No. 294.

(c) *Dorvill c. Tresaur*, File 112, No. 319.

(d) *Hall c. Hill*, File 112, No. 240.

(e) *Yaxley c. Delavall*, File 113, No. 67; “incuria” struck out of the sentence. Affirmed by the delegates; Miscell. Bundles, Ser.

IV., 1650-57 bble., No. 76.

(f) *Lawe c. Lee*, File 113, No. 223; *Cooper c. Breeze*, File 114, No. 34.

(g) *Swyre c. Church*, File 114, No. 86.

(h) *Martyn c. Greene*, File 115, No. 95.

(i) *Jocelyn c. Wickett*, File 115, No. 91. Both these last sentences are by Dr. Exton.

(k) *Peers c. Cole*, File 116, No. 4; *Haberdynne c. Reeves*, File 116, No. 3.

(l) *Parke c. Sorrell*, File 116, No. 160.

(m) *Cornwallis c. Noden*, File 117, No. 145. Affirmed on appeal, Miscell. Bundles, Ser. IV., 1677-79 bble. 27, No. 9.

Sir Leoline Jenkins, gives full damages. In 1675, in two cases (*n*) where the cause of collision is stated to be uncertain, Sir Leoline Jenkins, applying, as he states, the general maritime law—"nos dispositionem juris maritimæ in hac parte apud omnes gentes receptissimi sequentes"—gives half damages. In one of these cases, *Williams v. Marten*, the decision in *The Khedive* (*o*) is anticipated, and both ships having been damaged, one more extensively than the other, sentence goes against the latter for half the balance of the loss. In 1677 (*p*) Sir Richard Lloyd, sitting as surrogate for Sir L. Jenkins, condemned one ship in half the loss of the other, because, by reason of the contrariety of witnesses and difficulty of proof, the loss was to be deemed to have been caused by accident (*casu fortuito*). In 1678 (*q*) half damages are given by the same judge, because it was not proved that the collision was wilful—*ex studio aut malitiâ aut invidiâ*; but in the same year (*r*), and again in 1690 (*s*), where it was by negligence—*negligentiâ vel ignorantia*—full damages are given. There is extant a certificate of 1690 by Sir Charles Hedges, the judge of the Admiralty, that at that date the rule of division of loss was applied in all cases where the cause of loss was doubtful (*t*). In 1692 (*u*) the decree states that the collision was accidental, and that therefore the loss was to be deemed to have been in some measure (*quadamtenus*) caused by the fault of the other ship (*x*). In 1695 the rule was twice applied by Sir Charles Hedges. In one (*y*) case no reason is given; in the other (*z*), it is found that the plaintiff's loss was caused by the fault of the master and crew of the other ship; therefore (the decree continues) the owners of the defendant ship are liable to make good to the plaintiffs a certain part of their loss. "Cum antem ob incertitudinem ex varietate et contrarietate depositionum testium hinc inde examinerum proveniente, certa pars damni, quota est quam altera pars alteri

(*n*) *Potter v. Keeble, Williams v. Marten*, File 117, Nos. 141, 144. Both affirmed, bdle. 27, *supra*, Nos. 11, 14.

(*o*) *Supra*, p. 148.

(*p*) *Brown v. Gravenor*, File 118, No. 43. Affirmed, bdle. 27, *supra*, No. 27.

(*q*) *Jermin v. Shadfurth*, File 119, No. 116.

(*r*) *Newman v. Lacy*, File 119, No. 151.

(*s*) *Russell v. Joad*, File 124, No. 41.

(*t*) *Miscell. Books*, 1012, *ad. med.*

(*u*) *Trew v. Peirce* (1692), Marsd. Ad. Ca. 234.

(*x*) The note of the decree is as follows: "Ex quo quod sibi constat, dicto navi collisionem ex Peirce et nautarum suorum culpâ et negligentia quadamtenus perveni se." Peirce was master of the ship sued.

(*y*) *Fantley v. King*, Ad. Ct. Ass. Book, 4th Feb. 1695.

(*z*) *Beckham v. Chapman*, *ibid.* 20th Jan. 1695; *Franches v. Dingslach*, Act Book, No. 187, fo. 155a, is a similar case of this period (1693-97).

dedit; liquidari haud possit, dominus judex antedictus dispositionem juris maritimi apud omnes receptissimi sequens," condemns the defendant owners in half the loss of the plaintiffs. Though no fault is found against the plaintiffs, the wording of the decree rather implies it. In 1698 (a) a case occurs where each ship suffered injury, and each claimed damages against the other. Sir C. Hedges made a decree that each ship should pay to the other half her loss. No reason is given for dividing the loss. In 1702 (b) Dr. Bramston, surrogate for Sir C. Hedges, makes a decree against the ship sued, she being found to be alone in fault. The reasons given are similar to those in *Beckham c. Chapman*, *supra*. In 1706 two similar cases occur (c), no fault being found in either case against the plaintiff's ship. In the same year (1706) (d) there is a case where, fault being found against both ships, the loss is divided equally, for the reason given in *Beckham c. Chapman*, namely, the difficulty of proving the loss properly attributable to the fault of each. The decree was affirmed by the Delegates. In 1712 (e) the Delegates varied a decree of Sir C. Hedges by which he had dismissed the defendants without costs, by declaring that they should pay half the plaintiff's loss. No reason is given. In 1726 (f) Sir Henry Penrice found that the defendant had failed to prove his case (*defecisse in probationibus*); and dismissed the defendant without costs. The question of applying the *rusticum judicium* seems to have been raised; for in the registrar's minute book is a note (afterwards struck out) that a day was assigned for discussing the question "whether the *rusticum judicium* can be admitted in this case?" In 1746 (g) the same judge divided the loss where the cause of the collision, "from the great contrariety of the evidence," was uncertain.

Noble c. Wilson is the last appearance of the *rusticum judicium* until 1789, the year in which the well-known case of *The Petersfield* and *The Judith Randolph* (h) occurred. It is singular that in that year three cases were decided in which the rule of

History of
the rule since
1746.

(a) *Rennen c. Humble*, Ad. Ct. Ass. Book, 9th May, 1698; 26th May, 1698.

(b) *Mason c. Johnson*, Ad. Ct. Ass. Book, 11th March, 1702; Act Book, No. 189, fo. 407.

(c) *Maryngill c. Taylor*, Ass. Book, vol. 368; Act Book, fo. 523; *Kitchener c. Copklin*, Act Book, 191, fo. 4.

(d) *Noden c. Ashton*, Libels, File 128, No. 350; Ass. Book,

20th June, 1706. See Delegates' Ass. Book.

(e) *Gull c. Carswell*, Ass. Book, 26th May, 1709; Delegates' Ass. Book, 19th Dec. 1712.

(f) *Reed c. Wellford*, Ass. Book, 26th Jan. 1726.

(g) *Noble c. Wilson*, Ass. Book, 28th Nov. 1746.

(h) In the Ass. Book; *nom. Wildman, c. Blakes*.

division of loss was applied; in two of them by the High Court of Admiralty, in the other by the Delegates.

The Petersfield
and *The*
Judith Randolph
(1789).

On the 20th of May, 1789, Sir James Marriott, Judge of the Admiralty Court, in *The Petersfield* and *The Judith Randolph*, pronounced "that both ships were in fault; that *The Judith Randolph* was most in fault; and decreed that the whole of the damage sustained by the owners of the ship *Petersfield* and her cargo, which was sunk and lost, as well as the 230*l.* damages (i) and expenses given against the ship *Petersfield*, and the costs of suit here on both sides, be borne equally by the parties in this suit." This appears to have been the first case in which the *rusticum judicium* was applied solely upon the ground that both ships were in fault, with an express finding that the fault of one ship was greater than the fault of the other.

The Friends
Goodwill and
The Peggy
(1789).

The next case in order of date is *The Friends Goodwill* and *The Peggy* (k). This was a decision of the Delegates varying a decree of Sir J. Marriott (9th December, 1785), by which he had pronounced that *The Peggy*, the defendant ship, was alone in fault, and had condemned her owners in full damages and costs. The case was appealed, and on the 7th of July, 1789, the Delegates (l) "pronounced for the appeal . . . reversed the decree of the said judge . . . and did pronounce that the master and crew of each of the said ships *Friends Goodwill* and *Peggy* contained in the proceedings of this cause were equally blameable in their conduct as to the said two ships running foul of each other, and by which means the said ship *Friends Goodwill* and cargo were totally lost; that the loss or damage occasioned by the aforesaid accident, and all costs, charges, and expenses incurred or to be incurred on account thereof, ought to be borne, paid, and sustained by the said John Stoker and Robert Hutton, the owners of the said ships in equal moiety, and share and share alike, &c." (m).

It is evident from the various orders made in this case that the

(i) From a note of Dr. Nicholl, who was counsel for *The Judith Randolph*, it appears that after the institution of the Admiralty suit an action had been brought at common law by *The Judith Randolph* owners against *The Petersfield* owners, and that a verdict for 65*l.* damages and 165*l.* costs had been recovered. This is the sum of 230*l.* here mentioned: see Miscell. Bundles, Ser. III., No. 18. The papers in the case are Instance Papers, bdl. 76,

where there is a copy of the record in the King's Bench. The record is King's Bench, East, 27 Geo. 3, rot. 1416.

(k) *Nom. Hutton v. Stoker*.

(l) Gould, J., Ashurst, J., Hotham, B., and Dr. Fisher were the judges.

(m) The parties had agreed that the Court should take the report of three Trinity masters upon the merits of the case.

Delegates had very great difficulty in arriving at a decision. The two Trinity masters by whom they were assisted differed in opinion as to the merits, and by consent of the parties a third was called in.

The third case of the year 1789 was *The Resolution* and *The Langton* (n). This is in one respect the most remarkable of the three cases, for in it Sir James Marriott decided, in terms apparently chosen in order to raise the question whether the *rusticum judicium* may be applied where the collision occurs without fault in either ship, that it did apply to such a case; and from his decision there was no appeal. The registrar's note of the interlocutory decree is as follows:—"Sir J. Marriott, judge, pronounced that the loss of the ship and cargo of *The Resolution* was not occasioned by the default of the masters and crews of either of the ships in question, but was an inevitable accident, owing to the showring weather, the darkness of the night, the small distance of the two ships, and shortness of time in discovering each other, being close; and the judge decreed that the damages on the loss of the ship *Resolution* and her cargo, as well as the damage done to the ship *Langton*, together with the costs of suit on both sides, be equally borne by both parties; and assigned each party to bring in a schedule of their damages; which being brought in the judge referred the same to the registrar, taking to his assistance two merchants" (o).

The Resolution
and *The Langton*
(1789).

It should be added that in the year (1788) previous to that in which the three last-mentioned cases were decided occurred the case of *The Three Relations* and *The Britannia* (p). There Sir James Marriott pronounced that "under the circumstances of the case, each party should stand by his own damage and expenses." What the circumstances of that case were does not appear from the registrar's minute book, from which the decree is here cited. The decree is unusual in form; the common form, where (as here) fault is alleged and not proved, being to the effect that the plaintiff's libel not having been proved, the adverse party be dismissed from further observance of justice in the cause.

The Three Relations and
The Britannia
(1788).

It is singular that during the long period (q) during which Lord Stowell presided over the Admiralty Court no case occurred

(n) *Nom. Nelson c. Fawcett* in the Ass. Book.

(o) This decision is in accordance with the statement of the law in Brown's *Admiralty Law*, vol. 2, p. 206: "In case of accident the

loss was divided between both parties in equal proportions."

(p) *Faye c. Graham*, 26th March, 1788.

(q) Thirty years, 1798—1828.

in which he had occasion to apply the rule of division of loss. Two cases should, however, be here mentioned, both of great importance in the history of the subject. In *The Woodrop Sims* (r), decided by Lord Stowell (then Sir William Scott) in 1815, and in *The Lord Melville*, decided in 1816, occur the dicta of that learned judge with reference to the incidence of loss in case of collision, referred to on a former page (s), in which he divides collisions into four classes: (1) where the collision is caused by the fault of the defendant ship; (2) by the fault of the plaintiff ship; (3) by the fault of both ships; (4) without fault in either ship. The rule of division of loss is declared to be applicable only in the third case, namely, where the collision is caused by the fault of both ships. Notwithstanding the conflicting decisions above cited and the various reasons given for them, there can be no doubt that at the present day the law is as stated by Lord Stowell. Whatever may have been the original reason for the *rusticum judicium*, the only reason applicable to it in its modern form is common fault. It remains only to mention two or three more cases to complete the history of the rule.

Hay v. Le Neve.

In 1824 *Hay v. Le Neve* was decided by the House of Lords. That was an appeal from a decision of a Scotch Court, which had apportioned in unequal shares (t) the loss suffered by a vessel, *The Wells*, which had been sunk at her anchor by *The Sprightly*. The House of Lords varied the decision of the Scotch Court, and, relying upon the dicta of Lord Stowell above mentioned, divided the loss in equal shares, and condemned the owners of *The Sprightly* in half the loss on *The Wells*. In that case both ships were clearly in fault: *The Wells* for having brought up in an improper place and for not showing a light, *The Sprightly* for negligent navigation and want of look-out. The question in dispute was, whether the division of loss should be in equal shares or be apportioned according to the degree of fault in either vessel. The decision was in accordance with Lord Stowell's dicta, and, it may be added, with an unbroken line of authorities for a period of at least 146 years, in favour of an equal division. But there was no decision that the rule of division of loss was confined, as stated by Lord Stowell, to the

(r) This case should be cited as *The Woodrop*, the name of the ship. Sims, her master, according to the practice of the day, was probably sued personally. It is, however, so commonly known as *The Wood-*

rop Sims, that the name has been retained.

(s) *Supra*, p. 136.

(t) *The Sprightly* was condemned in two-thirds of the loss suffered by *The Wells*.

case of "both ships in fault." Nevertheless, since the decision in *The Resolution* and *The Langton* the rule has never been applied, except in the case of "both ships in fault"; and the dicta of Lord Stowell, having acquired additional weight by the citation in the House of Lords in *Hay v. Le Neve*, have been taken, apparently without discussion, to settle the law. Thus in *The Catherine of Dover (u)* (1828), Sir Christopher Robinson, in addressing the Trinity masters, stated the law as follows:—"The result of the evidence will be one of three alternatives: either a conviction in your mind that the loss was occasioned by accident, in which case it must be sustained by the party on whom it has fallen; or a state of reasonable doubt as to the preponderance of evidence, which will have nearly the same effect; or thirdly, a conviction that the party charged with being the cause of the accident is justly chargeable with the loss of this vessel according to the rules of navigation which ought to have guided them."

It remains only to mention the case of *The Monarch* and *The Success*, decided by Sir Christopher Robinson on the 23rd of June, 1838, as being the next in which the *rusticum judicium* was applied. There the judge pronounced "the collision in question in this cause to have been caused by the fault of the masters and crews of the said ship or vessel *Monarch* and the late smack *Success*, and for a moiety only of the damages proceeded for, and condemned [the owners of *The Monarch*] and the bail given on their behalf to answer the action in a moiety of such damage and of the costs incurred on behalf of [the owner of *The Success*] in this cause" (x). This decree was subsequently, on the 31st of January, 1839, rescinded by Dr. Lushington as regards costs; and by a new decree he pronounced the parties "to be liable to the costs incurred on their own behalf only" (y).

This completes the history of the application of the rule, so far as the present writer has been able to trace it by an examination of the Admiralty records. Since the year 1838, the date of the decision in *The Monarch*, the number of collision cases

The Monarch
(1838).

History of
the rule since
1789.

(u) 2 Hag. 145. Cf. also *The Maid of Auckland* (1848), 6 Not. of Cas. 240, where there were cross actions, and Dr. Lushington dismissed both for want of proof: *The Laconia*, 2 Moo. P. C. N. S. 161 (1863), where a similar order was

made by the Privy Council: *The Marpesia* (1872), L. R. 4 P. C. 212.

(x) This is the case called *The Monarch*, and referred to in a note to *The Celt* (1837), 3 Hag. 321.

(y) *The Monarch*, 1 W. Rob. 21.

has been very large, and the *rusticum judicium* has been frequently applied; but always, it may be safely assumed, in cases of "both ships in fault." In *The Oratava* and *The Janet*, 11th May, 1839, and *The London Merchant*, 20th May, 1840, it was so applied; and beyond this the examination of the records has not been carried. It may be assumed that if, since 1840, the rule had been applied in any case of "neither ship in fault," or "insufficient proof," such a case would have been reported; and no such case appears in the books. It may therefore be taken to be a fact that for fully a century (since 1789) the rule has only been applied in cases of "both ships in fault"; never in the case of "neither in fault," or in the case of "insufficient proof." Nay, further, in such cases the plaintiff's action has invariably been dismissed, and generally with costs. Several instances of this will be found referred to in a former page (z). Yet neither has the decision of Sir James Marriott in *The Resolution* and *The Langton*, nor have any of the previous decisions between the years 1677 and 1789, in which the *rusticum judicium* was applied in cases of doubt and mere accident, been reversed, overruled, or, so far as the writer is aware, even referred to (a) or discussed. Not having been reported, they appear to have altogether escaped observation; so much so that in *Hay v. Le Neve* (1824) Lord Giffard states that the advocates (of whom Dr. Lushington was one) who appeared in that case, in answer to a question from the House, acknowledged that they were not aware of any case in which the *rusticum judicium* had ever been applied in England. A note of *The Petersfield* was supplied to the House by Lord Stowell, who was a member of the House, but does not appear to have heard the appeal. It is singular that that learned judge was not (it seems he was not) aware of the decisions in *The Resolution* and in *The Friends Goodwill*, both of which occurred in 1789, the year of the decision in *The Petersfield*, and of which one was in direct conflict with his dicta in *The Woodrop Sims* and *The Lord Melville*.

The view of the Legislature, as shown by sect. 25, sub-sect. 9,

(z) See the cases cited above, p. 167, note (u). To these may be added the following decisions of Lord Stowell: *The Flora*, 28th June, 1815; *The Robert*, 9th June, 1818; *The Vrow Janetze*, 2nd Feb. 1820; *The Betsy Caines* (1827), 2 Hag. 28; *The Margesia* (1872),

L. R. 4 P. C. 212.

(a) In *Hay v. Le Neve*, a case in the reign of Queen Anne was referred to (*semble*, one of the cases decided between 1707 and 1718 cited above), but not with reference to the point here under discussion.

of the Judicature Act, clearly was that the rule applies only where both ships are in fault. It cannot be supposed that an Act passed manifestly with a view to make the law uniform in all the Courts would have left the rule of division of loss applicable in Admiralty in case of doubt and mere accident, whilst, for the sake of uniformity, it extended the rule where both ships are in fault to the Common Law Divisions of the High Court.

CHAPTER VII.

LIMITATION OF LIABILITY.

IN this chapter the law respecting the limitation of the liability of shipowners, as defendants, to amounts corresponding to the tonnage of their ships is discussed; the limitations on the rights of persons claiming as plaintiffs has been considered above (a).

Limitation of liability is statutory.

Maritime and foreign law upon the subject.

In this country the limitation of shipowners' liability depends entirely upon statute. It is said by writers of authority that by the maritime law the shipowner's liability for collision is limited to the value of ship and freight (b); and this, it is believed, is the law in most or all foreign countries at the present day. Whether such a rule of the maritime law (c) ever existed, it is immaterial here to inquire. No such rule has ever been recognized by the Courts of this country, either at common law or in Admiralty (d). By the

(a) *Supra*, p. 89.

(b) 3 Kent's Comm. § 218; 4 Phillimore's International Law, 2nd ed. 628; Valin sur l'Ordonnance de la Marine, l. 2, tit. 8, Art. 2; Cours de Droit Comm. Mar. Boulay-Paty, vol. i. 263—298; Pardessus Droit Commercial, Part 4, tit. 2, ch. 3, s. 2; Emerigon Cont. à la Grosse, ch. 4, s. 11; and see *per* Bradley, J., in *The Jos. W. Dyer v. The National Steamship Co.*, 14 Blatchf. 483, 487; and *per* Ware, J., in *The Rebecca*, Ware's Rep. 188, 195, 198; *The Phebe*, Ware, 263. The Consolato del Mare, cc. 141, 182, provides that in certain cases the ship herself, and the managing owner, shall be liable to the merchant for the loss of his goods, but the other owners only to the extent of their shares. But it seems that for damage caused by their own fault, as where the ship's equipment is deficient, the part owners were liable to the full extent. See *ibid.* 194.

Upon contracts with reference to the ship entered into by his agent, it seems that the shipowner was liable only to the ship's value. See *ibid.* cc. 209, 244.

(c) As to whether a general maritime law binding upon the Courts of this country ever in fact existed, see *per* Willes, J., *Lloyd v. Guibert* (1876), L. R. 1 Q. B. 115, 124; *per* Brett, L. J., *The Gaetano* (1882), 7 P. D. 143; *The Leon* (1881), 6 P. D. 148; *The Patria* (1871), L. R. 3 A. & E. 436, 461, 462.

(d) See *The Dundee* (1823), 1 Hag. Ad. 109, 120; *The Carl Johann* (1819), referred to, 3 Hag. Ad. 186; *The Aline* (1840), 1 W. Rob. 111; *The Volant*, *ibid.* 383; *The Mallona* (1849), 3 W. Rob. 16, 20; *The Wild Ranger* (1860), Lush. 553, 564; *Wilson v. Dickson* (1818), 2 B. & Ald. 2; *Gale v. Laurie* (1826), 5 B. & C. 156, 164; *Cope v. Doherty* (1857), 4 K. & J. 367, 378; *Stoomvaart Maats-*

municipal laws of Holland, France, and other continental nations, the liability of shipowners, not only for the torts but also for the contracts of the master of their ship, has for more than two centuries been limited to the value of the ship and freight (e). It is perhaps due to this fact that limited liability has been said to be a principle of the general maritime law. But its origin cannot be traced either to the Roman law or to any of the mediæval codes of maritime law. In both these systems it is either implied or expressly stated that the wrong-doer in a collision shall make full compensation (f).

The contract of *commande*, or joint adventure of ship—

It originated
perhaps in
commande.

chappuy, *Nederlands v. Peninsular and Oriental Steam Navigation Co.* (1882), 7 App. Cas. 795, 814; *The Duplex*, (1912) P. 8. The dictum of Parke, B., in *Brown v. Wilkinson* (1846), 15 M. & W. 398, appears to be incorrect. In *Voguel v. Tomlinson*, Marsden Ad. Cas. 314, decided by the Delegates in 1738 (the collision occurred in 1733), the sentence was for full damages, a sum which must have largely exceeded the value of the wrong-doing ship and her freight. The loss on the plaintiff's ship, *The Eleanor*, is stated in the pleadings to have been 2,000*l.*, and the value of the defendant's ship, *The Wilhelmina*, and her freight 680*l.* (600*l.* + 80*l.*). The case is interesting also upon another point. It shows that cargo on board the wrong-doing ship, as well as the ship herself, was formerly liable for the loss. *The Wilhelmina* had a cargo on board worth from 15,000*l.* to 20,000*l.*, and this was arrested and not released until its owners had given bail in 4,000*l.*, notwithstanding their contention that cargo-owners were not liable for the damage. See Ad. Ct. Records, Miscell. Bundles, Ser. IV. bdle. 20; *ibid.* Delegates' Processes, vol. 489, No. 1048.

(e) Emerigon, *Contr. à la Grosse*, ch. 4, s. 11; Boulay-Paty *Cours de Droit Commercial Maritime*, vol. i., pp. 263—298. See also *The Mary Ann* (1866), L. R. 1 A. & E. 8, 11.

(f) As to liability for collision by

the Roman Law, see Dig. lib. 4, tit. 9; Dig. lib. 44, tit. 7, fr. 5; Dig. lib. 45, tit. 5, fr. 1. As to the mediæval codes, the Laws of Oleron, Art. 15 assumes that the wrong-doer shall pay full damages—*tous ses dommages—tot ses damages*. See Black Book, Rolls Ser. i. 108; *ibid.* vol. ii., pp. 229, 449. So the Consolato del Mare, cap. 155: "E si dan li fa, deulo li tot esmenar e restituat," but if the collision is accidental, "no li sia tengut de esmenar tot lo dan . . . per ceo car no es sa culpa"; and see *ibid.* cap. 158, to the like effect. So the Wisby Sea Laws, Art. 29: De schipper is schuldich myt synen schipluden to delende den schaden mank sik; and the Hamburg Code, Art. 23, *he schal eme gans den schaden beteren*: Black Book, iv. 373; and the Gotland Code, Art. 65, *so schal hre eme den schaden al hel gelden*. And by the Flanders Sea Laws, Art. 15, the master who lays out his anchor so as to damage another ship, *si siin datwel scouldich te beteren*; and Art. 31 of the Gotland Code to the same effect: Black Book, iv. 88. So the rule as to dividing the loss assumes that, but for it, the ship run down would recover *alle die schade* (Flanders Code), *alle den schaden* (Gotland Code, Art. 30, Black Book, iv. 88). In the Instructions to the Admiral in the Black Book of the Admiralty, dating circ. 1337—1351 (Black Book, i. 37), the wrong-doer in a collision is to make *plaine amende*.

owners and merchants, corresponding in some respects to the *société en commandite*, or partnership with limited liability, of modern times, is perhaps the origin of the widespread doctrine of limited liability of shipowners. This kind of association extensively prevailed in the Mediterranean in the Middle Ages, and is frequently mentioned in the *Consolato del Mare*. As regards third parties, it seems that the liability of the shipowner upon contracts entered into by his agent, or committee in such an association, with reference to the ship, was limited to the value of the ship (*g*).

Protection is
at the root of
it. So avowed
by Grotius.

It is not until the beginning of the seventeenth century that we find protectionist doctrines put forward upon grounds of public policy as a reason for limiting shipowners' liability. Grotius, writing in the year 1625, says that the principle of limitation of owners' liability upon the contracts of the master prevailed in his day, and for a long time previously had prevailed in Holland (*h*). And he approves the principle as being consonant with natural justice, and necessary for the encouragement of shipping (*i*). Liability for collision is not expressly noticed, but the principle which limited liability in the case of his contracts, probably applied equally to protect owners from unlimited liability for their master's torts. The rule of continental law which limits the shipowner's liability upon his master's contracts has never been adopted in England; the liability of a shipowner upon contracts entered into by the master as his agent having always been, as it is at the present day, unlimited.

Analogy of
noxal action
—*noxæ deditio*.

More than one writer (*k*) has pointed out the analogy between the law, which limits shipowners' liability to the value of ship, and the noxal action—*noxæ deditio*—of the Roman law. The law of deodand has also been thought to be founded on the same idea, which seems to personify

(*g*) Cf. *Consolato del Mare*, cc. 209, 244.

(*h*) *De Jure Belli et Pacis*, l. 2, ch. 11, s. 18: "Apud Hollandos ubi mercatura pridem maxime viguit . . . et nunc et olim constitutum ne exercitoria etiam universi (exercitores) amplius teneantur quam ad æstimationem navis,

et eorum quæ in navi sunt."

(*i*) "Absterrentur enim homines ab exercendis navibus si metuant ne ex facto magistri quasi in infinitum teneantur": *ibid.*

(*k*) See Bynkershoek, *Quæst. Jur. Priv.* l. 4, c. 20; Holmes on the Common Law, p. 30.

the inanimate object with which the injury is done and to identify it with the actual wrong-doer. In the face of the express provisions of the Code of Oleron and other sources of English maritime law, which require the wrong-doer to make full compensation to the sufferer in a collision, there is difficulty in accepting this view as to the origin of limited liability.

The rule of unlimited liability, which seems to have been adopted from the civil law into the mediæval codes, was in the case of inevitable accident to some extent modified by the rule of division of loss. And in some of the later codes there are traces of the rule of division of loss being extended to cases of collision by negligence (*l*); but the limitation of liability to the value of ship and freight belongs to a later date.

Connection between limitation of liability and division of loss.

In the case of damage done by a ship belonging to foreigners resident abroad, and where service of a writ of summons cannot be effected, the damages recoverable are, in practice, limited to the value of the ship and freight, the *res* arrested by the Admiralty Court. The statutory limit of liability is doubtless connected with this fact; but the arrest of the ship was adopted, in the first instance, in order to compel her owners to appear, and not because their liability was limited to the value of the ship (*m*).

Connection between limited liability and arrest of the ship.

The history of the singular legislation in this country which prevents the sufferer in a collision between ships from recovering damages beyond a sum fixed by reference to the size of the instrument with which the damage is done, is as follows: Until the year 1734, by the common law of England and by the maritime law as administered in the Admiralty Court of this country, the liability of ship-

History of English legislation upon the subject.

(*l*) See *Droit Maritime de la Suède*, 3 Pardess. 129, 173, 174; *Dantzic Sea Laws*, Art. 51, Black Book, iv. 349.

(*m*) Though, as pointed out by Sir J. Jervis, in *The Bold Buccleugh* (1851), 7 Moo. P. C. 267, 282, arrest of the ship in Admiralty is not exactly analogous to the process of foreign attachment. See also *supra*, p. 88. The dictum of Parke, B., to the contrary in *Brown v.*

Wilkinson (1846), 15 M. & W. 391, is probably incorrect. Dr. Browne (*Civ. Law*, ii. 397) thought that in an action *in rem* for collision, there is no pretence for making the owner answerable, or demanding reparation as against him beyond the value of the ship; though, as he points out, Bynkershoek thought that, as against the master, there is a remedy *in solidum*.

1734. owners for damages by collision was, as has been stated above (*n*), unlimited. In that year an Act (7 Geo. 2, c. 15) was passed limiting shipowners' liability for loss of cargo by theft of master or crew to the value of the ship and freight (*o*). This Act was passed in consequence of the decision in *Boucher v. Lawson* (*p*), by which the shipowners were held liable for loss of a cargo of bullion taken on board in Portugal and afterwards stolen by the master. The fact that Holland and other maritime nations of Europe had previously passed similar laws, for the protection and encouragement of their shipping, appears to have influenced the Legislature in passing the measure (*q*). By 26 Geo. 3, c. 86, the relief afforded by the previous Act was extended to cases of theft by persons other than the crew, and to cases of loss by fire (*r*). Limitation of liability in case of collision was first created by 53 Geo. 3, c. 159. This Act, after reciting that it was expedient to encourage the owning of British ships (*s*), fixed the limit of shipowners' liability for
- 1765.
- 1780.

(*n*) See *supra*, p. 170, and note (*d*).

(*o*) *Sutton v. Mitchell* (1785), 1 T. R. 18, is a decision under this Act, that the owners were not liable beyond the statutory limit for a robbery of cargo in which one of the crew was concerned.

(*p*) Cas. temp. Hardw. 85. See *per* Buller, J., *Yates v. Hall* (1785), 1 T. R. 75, 78. *Boucher v. Lawson* is clearly the case referred to in the petition of shipowners set out in the Journals of the House of Commons, Sess. 1733, p. 277. The petitioners, after referring to the decision, complain that they, "when they became owners of ships, did not apprehend themselves exposed to such hazard, or liable as owners to any greater loss than that of the ships and freight; and of the insupportable and unreasonable hardships to which our laws in this case subject them; and to which no owners of ships are exposed in other trading nations"; and they represent to the House "that, unless some provision be made for their relief, trade and navigation will be greatly discouraged, since owners of ships find themselves, without any fault on their part, exposed to ruin, &c.,

&c., &c." A very similar petition, asking for an alteration in the law by which shipowners were made liable for damage done by their ships, when they (the owners) were not on board, was presented to Parliament in the fifteenth or early sixteenth century. It was not successful. "Le Roy sadvisera" was the answer. See Ancient Petitions, 6264.

(*q*) See *per* Lord Stowell, *The Dundee* (1823), 1 Hag. Ad. 109, 121; *per* Abbott, J., *Gale v. Laurie* (1826), 5 B. & C. 156, 163; *per* Lord Blackburn, 7 App. Cas. 812; and see *supra*, p. 171. The Commons Journals for the year 1733 contain several petitions from shipowners for relief in other matters. Another Act of the same year—53 Geo. 3, c. 87—was passed for their relief.

(*r*) *Hunter v. McGown* (1819), 1 Bligh, 573, was a decision that this Act did not apply to inland craft, such as a Clyde gabbert.

(*s*) There does not appear to have been any considerable discussion in Parliament upon the principle of either this or the subsequent Acts limiting shipowners' liability. See Commons Journals, vol. 68, p. 670;

damage to other ships and to cargo on board either of two ships in collision at the value of the ship sued and the freight she was earning or under contract to earn. The Act was confined to sea-going British ships, and under it questions arose as to the amount of the shipowners' liability when freight had been paid before the collision (*t*), or never earned (*u*), as to the time at which the ship's value was to be taken for the purpose of the Act (*x*), and as to the ship's appurtenances which were to be included in the valuation (*y*). The preamble shows that limitation of liability was founded upon considerations of policy and not of justice. "The principle of limited liability is that full indemnity, the natural right of justice, shall be abridged for political reasons" (*z*). As to the justice of the Acts limiting liability, opinions have differed widely (*a*); and it is possible that the construction of the Acts has not been unaffected by these opinions (*b*); but there is no reason why they should be construed otherwise than according to the fair and natural meaning of their words (*c*).

By the Merchant Shipping Act, 1854 (17 & 18 Vict. 1854. c. 104), ss. 504, 505, the same limit was fixed for damages recoverable for loss of life or personal injury, with a provision that in such cases the value of the ship should be taken at not less than 15*l.* per ton (*d*); and the statutory limitation

133 Hansard's Parl. Deb. pp. 574 seq. Upon the Act of 1862 there was some discussion of details, but little was said as to the principle or policy of the Act: Hansard, vol. 165, p. 1932; vol. 166, pp. 2217 seq.; vol. 167, pp. 735, 750; vol. 168, pp. 1 seq.

(*t*) *Wilson v. Dickson* (1818), 2 B. & Ald. 2.

(*u*) *Cannan v. Meaburn* (1822), 1 Bing. 465.

(*x*) *Brown v. Wilkinson* (1846), 15 M. & W. 391.

(*y*) *The Dundee* (1823), 1 Hag. Ad. 120; *Gale v. Laurie* (1826), 5 B. & C. 156; *The Triunc* (1834), 3 Hag. Ad. 114, *infra*, p. 182, were decisions under this Act.

(*z*) *Per* Dr. Lushington, *The Amalia* (1863), 1 Moo. P. C. N. S. 471, 473.

(*a*) "An Act sufficiently tyrannical as it is": *per* Brett, L. J., *The*

Ettrick (1881), 6 P. D. 127, 136. Similar opinions are expressed in *The Northumbria* (1869), L. R. 3 A. & E. 6, 13; *Chapman v. Royal Netherlands Steamship Co.* (1879), 4 P. D. 157, 184; *The Andalusian* (1878), 3 P. D. 182, 190; and *per* Dr. Lushington, *supra*. A different view was taken by Butt, J., in *The Warkworth* (1884), 9 P. D. 20, 21. And see *per* Mellish, L. J., in *London & S. W. Rail. Co. v. James* (1873), L. R. 8 Ch. 241, 252.

(*b*) See *per* Abbott, C. J., *Gale v. Laurie* (1826), 5 B. & C. 156, 163; *per* Brett, L. J., 4 P. D. 184; 6 P. D. 136; *per* Dr. Lushington, *The Benares* (1850), 14 Jur. 581.

(*c*) See *per* Butt, J., *The Warkworth* (1884), 9 P. D. 20.

(*d*) *Nixon v. Roberts* (1860), 1 J. & H. 739; *Leycester v. Logan* (1857), 4 K. & J. 725; *Dobree v.*

was extended to foreign as well as British ships. Under all these Acts the value of the ship and freight at or immediately before the collision had to be ascertained, a fruitful source of litigation and expense.

To obviate this (*e*), and also in order that bad and inferior ships should not have an advantage, in case of collision, over good and valuable ships (*f*), sect. 54 of the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), was passed. That section struck a rough average value for all ships at 15*l.* or 8*l.* per ton, the valuation to be at the higher or lower rate according as the collision was accompanied by loss of life or personal injury or not. In 1894 it was repealed, but in substance re-enacted, by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, s. 503), as follows:—

57 & 58 Vict.
c. 60, s. 503.

(1.) The owner of a ship, British or foreign, shall not, where all or any of the following events take place without their actual fault or privity; (that is to say),

- (a) Where any loss of life or personal injury is caused to any person being carried in the ship;
- (b) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;
- (c) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;
- (d) Where any loss or damage is caused to any other vessel or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship;

be liable in damages beyond the following amounts; (that is to say),

- (i.) In respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and

Schroder (1833), 6 Sim. 291; 2 M. & Cr. 489; *Grainger v. Martin* (1862), 2 B. & S. 456; *African Steamship Co. v. Swanzy* (1856), 2 K. & J. 660, are decisions under this Act.

(*e*) See *per* Lord Blackburn, 7

App. Cas. 811, 815.

(*f*) Hansard, Parl. Debates, vol. 165, p. 1932, Mr. Milner Gibson's speech on introducing the Bill: Lindsay's History of Merchant Shipping, vol. 3, p. 408.

(ii.) In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

(2.) For the purposes of this section,—

- (a) The tonnage of a steamship shall be her *registered tonnage, with the addition of any engine room space deducted for the purpose of ascertaining that tonnage* (g); and the tonnage of a sailing ship shall be her register tonnage: Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use, which is certified under the regulations scheduled to this Act with regard thereto (h);
- (b) Where a foreign ship has been or can be measured according to British law, her tonnage, as ascertained by that measurement, shall, for the purposes of this section, be deemed to be her tonnage (i);
- (c) Where a foreign ship has not been and cannot be measured according to British law, the surveyor-general of ships in the United Kingdom, or the chief measuring officer of any British possession abroad, shall, on receiving from or by the direction of the Court hearing the case, in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it may be practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship, if she had been duly measured according to British law; and the tonnage so stated in that certificate shall, for the purposes of this section, be deemed to be the tonnage of the ship.

(3.) The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to vessels, goods, merchandise, or things as

(g) Inserted in place of "gross tonnage without deducting engine room" by the Merchant Shipping Act, 1906, s. 69. The effect of the alteration is not retrospective: *The Langdale* (1907), 76 L. J. P. 154.

(h) See Merchant Shipping Act,

1894, ss. 82, 84, and the Merchant Shipping Act, 1906, ss. 54, 55.

(i) See Merchant Shipping Act, 1894, ss. 82, 84; and Merchant Shipping Act, 1906, ss. 54, 55. See also Merchant Shipping Act, 1894, ss. 77 *seq.*

aforesaid arising upon distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

Definitions of
"ship" and
"vessel."

By sect. 742 "ship" is defined as including "every description of vessel used in navigation not propelled by oars," and "vessel" as including "any ship or boat or any other description of vessel used in navigation." These statutory definitions do not purport to be exclusive, and regard must in all cases be had to the context (*k*). A hopper barge fitted with a rudder and navigating lights, but with no means of propulsion, has been held to be a "ship" (*l*); an electric launch used on an artificial lake not to be a "ship" because not a "vessel used in navigation"; a gas float used as a floating beacon not a "ship or vessel" (*m*); a dumb barge being propelled solely by oars not a "ship" (*n*); nor a non-descript square craft used as a dredger (*o*), but an unfinished ship is a "ship" (*p*).

Liability of
owners of
vessels which
are not
"ships."

It follows from the definitions that when a vessel which is not a "ship" does damage, the owner is not entitled to limit his liability. Thus the liability of the owner of a dumb barge is unlimited, both for loss of life or personal injury or loss or damage to cargo on board, and for loss of life or personal injury to persons on board another vessel, or loss or damage to another vessel or anything on board her, or to property or rights of any kind, whether on land or water, fixed or movable (*q*), by reason of the improper navigation of the barge. But it is submitted that it is possible that under certain circumstances, *e.g.*, when she is being towed, a dumb barge may be considered, on the analogy of the hopper barge cases, to be a "ship."

Persons
enabled
to limit
liability.

The persons entitled to limit their liability under the Merchant Shipping Act, 1894, and the Acts amending it (*r*),

(*k*) *The Mac* (1882), 7 P. D. 126; *Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, with reference to similar definitions in the Merchant Shipping Act, 1854.

(*l*) *The Mudlark*, (1911) P. 116, following *The Mac* (1882), 7 P. D. 126.

(*m*) *The Gas Float Whitton* (No. 2), (1897) App. Cas. 337.

(*n*) *Gapp v. Bond* (1887), 19 Q. B. D. 200; *The Owen Wallis* (1874), L. R. 4 A. & E. 175; *Everard v. Kendall* (1870), L. R.

5 C. P. 428.

(*o*) *The Blowboat*, (1912) P. 217.

(*p*) *The Andalusian*, (1878), 3 P. D. 182.

(*q*) Owners of "ships" can limit their liability for damage done to any property on shore or afloat by the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32), s. 2.

(*r*) The Merchant Shipping (Liability of Shipowners) Act, 1898 (61 & 62 Vict. c. 14); the

are, firstly, owners and charterers by demise (*s*) of British and foreign ships, including, it would seem, British owners of foreign ships (*t*), but excluding owners of British ships which have not been registered, except in the cases of ships exempt from registration (*u*), and the builders and other parties interested in the building of ships in the British dominions (*x*), provided they have not passed into foreign ownership (*y*).

Ships exempt from registration are those not exceeding fifteen tons burden (*z*), employed solely in navigation on the rivers or coasts of the United Kingdom or some British possession, within which the managing owners reside (*a*), ships not exceeding thirty tons and not having a whole deck engaged in trading or fishing on the coasts of Newfoundland or in the Gulf of St. Lawrence (*b*), and Government vessels (*c*). All other ships must be registered, but an exception may be made and a pass issued having the same effect as a certificate of registry to ships wishing to pass unregistered from one British port to another (*d*). A ship sailing under such a pass is entitled to limit her liability for damage caused on the voyage (*e*).

Ships exempt from registration.

Beneficial owners, as well as registered owners, are entitled to the benefit of limited liability (*f*). So also is a charterer

Beneficial owners entitled to limit liability.

Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32); the Merchant Shipping (Amendment) Act, 1906 (6 Edw. 7, c. 48).

(*s*) The Merchant Shipping (Amendment) Act, 1906 (6 Edw. 7, c. 48), s. 71.

(*t*) *The Brinio* (1891), 90 L. T. Jo. 249. In this case a ship bought by British subjects from Dutch owners, and not yet registered as British, was allowed to limit her liability in respect of the collision, which occurred while she still belonged to Dutch vendors.

(*u*) The Merchant Shipping Act, 1894, s. 508.

(*x*) The Merchant Shipping (Liability of Shipowners) Act, 1898 (61 & 62 Vict. c. 14), s. 1. The owner of an unregistered ship doing damage when being launched was formerly liable to an unlimited amount: *The Andalusian* (1878), 3

P. D. 182.

(*y*) The Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), ss. 70, 85.

(*z*) "Fifteen tons burden" means the "net" tonnage after deducting from the "gross" tonnage the allowances sanctioned by the Act: *The Brunel*, (1900) P. 24.

(*a*) The Merchant Shipping Act, 1894, s. 3 (1).

(*b*) The Merchant Shipping Act, 1894, s. 3 (2).

(*c*) The Merchant Shipping Act, 1894, s. 741. As to fishing craft, see sect. 373 and *Couper v. Mackenzie* (1906), 8 F. 1202. Government ships may be registered under the M. S. Act, 1906.

(*d*) The Merchant Shipping Act, 1894, s. 2 (2).

(*e*) *The Wills* No. 66 (1914), 83 L. J. P. 162.

(*f*) *The Spirit of the Ocean* (1864), Br. & L. 336; *The Brinio*, 90 L. T. Jo. 249. In *Hughes v.*

to whom the ship is "demised" (*g*), that is to say, when the ship is let by the owner and hired by the charterer so as to be under the control of the latter (*h*).

The register is not conclusive evidence of ownership. So where a limited company owned a ship and had inserted the name of a paid servant in the register as managing owner, it was held that he was not the owner (*i*).

Application
of Act to
dock, &c.
authorities.

The second class of persons who are entitled to limit their liability are Dock, Canal, Harbour and Conservancy Authorities, in respect of any goods, merchandise or other things whatsoever on board any vessel or vessels (*k*).

Benefit of the
Act may be
contracted
out of.

When a party has entered into a contract the fulfilment of which involves that his liability shall be unlimited, he is not permitted to limit his liability by proceedings under the Act. Thus where a yacht race was sailed under rules by which the owner of a yacht infringing any rule was to be liable for all damages arising therefrom, and a yacht committed a breach of the rules and in consequence sank another, it was held her owner could not limit his liability, but must make good the whole value of the yacht sunk (*l*).

The Act
applies to
all H. M.'s
dominions.

By sect. 509 of the Merchant Shipping Act, 1894, the provisions as to limitation of liability are applied to the whole of his Majesty's dominions. In some of these, however, laws have been passed which are not wholly in accordance with the Imperial Act (*m*).

It applies to
all ships in
all waters.

The Act applies in all cases of collision, whether the ships are both British, or both foreign, or one British and one foreign (*n*); whether the action is in Admiralty or at law (*o*).

Sutherland (1881), 7 Q. B. D. 160, a person who had contracted to buy a ship was held to be owner within the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 147.

(*g*) 6 Ed. 7, c. 48, s. 71; and see *Sir John Jackson, Ltd. v. Owners of S.S. Blanche*, (1908) A. C. 126.

(*h*) *Baumwoll v. Furness*, (1893) A. C. 8.

(*i*) *The Yarmouth*, (1909) P. 293.

(*k*) Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (62 & 63 Vict. c. 32), s. 2.

(*l*) *The Satanita*, (1897) App. Cas. 59.

(*m*) In St. Lucia the limit is 15*l*. per ton: Civ. Code, 2270. As to the Canadian Act, 43 Vict. c. 29, see *Georgian Bay Transportation Co. v. Fisher*, Tupper's Rep. Ontario, 383.

(*n*) *The Amalia* (1863), 1 Moo. P. C. N. S. 471; Br. & Lush. 151; including yachts (unless excluded by contract), *The Satanita*, (1897) App. Cas. 59.

(*o*) *Chartered Mercantile Bank of India, &c. v. Netherland Steam Navigation Co.* (1883), 10 Q. B. D. 521.

The liability of the owner (or dock or other authority) is not limited where he is the actual wrong-doer; the Act applies only where the collision occurs without the "actual fault or privilege" of the owner. The meaning of these words was discussed in *The Warkworth* (*p*), the facts of which case are stated later (*p*. 186). The effect of the words is to protect the shipowner, not only against the legal consequences of negligence in his servants or agents, but also from any imperfections in the ship which cause collision (*q*). An owner navigating his ship with his own hand, or, it seems, under his own orders as master, would not be entitled to the benefit of the Act.

If it is intended to make a master who is also part-owner liable beyond the statutory limit, as for a collision caused by his actual fault or privilege, he must be sued as master in the first instance (*r*). It is not clear what constitutes fault or privilege depriving an owner of the benefit of the statute. In *The Fanny* (*s*) it was held in the Court below that the plaintiff was not entitled to limit his liability on the ground that he was in fault for having appointed an incompetent person as manager. This decision was reversed on appeal on the ground that there was no evidence that the manager was incompetent. Where the master, who was also part-owner, was on board, but not on deck, at the time of the collision, and the ship was properly in charge of the mate and pilot, it was held that there was no fault or privilege on the part of the master (*t*).

The fact of the master of the wrong-doing ship being a part-owner and personally in fault for the collision will not deprive his co-owners of the benefit of the statute (*u*); but

(*p*) (1884), 9 P. D. 145.

(*q*) See also *The Diamond*, (1906) P. 282, decided on sect. 502, where the same words occur.

(*r*) *The Volant* (1842), 1 W. Rob. 383.

(*s*) (1912), 28 T. L. R. 217. For decisions on the similar liability under sect. 502, see *Asiatic Petroleum Co. v. Lennard's Carrying Co.*, (1914) 1 K. B. 419, and the cases there cited.

(*t*) *The Obey* (1866), L. R. 1 A. & E. 102. See *Kidson v. McArthur*, 5 Ct. of Sess. Cas. 4th ser. 936.

(*u*) *The Spirit of the Ocean* (1864), Br. & L. 336; *The Obey*, *supra*; *Kidson v. McArthur*, *supra*; *The Empusa* (1879), 5 P. D. 6; *Wilson v. Dickson* (1818), 2 B. & Ald. 2, was a similar decision under 53 Geo. 3, c. 159, s. 1.

he is himself liable for full damages (*x*). Where the master is a part-owner, it is not necessary for the co-owners, in order to obtain judgment limiting their liability, to prove that the master was not privy to the collision. They are entitled to the usual declaration limiting their liability, with a reservation of the injured person's rights against the master (*y*).

Liability of shipowner carrying in a ship not his own.

Where the carrier is a railway company.

The liability of a person who contracts to carry persons, animals, or goods by sea, and carries them in a ship not owned by himself, is not limited by the statute. But the liability of a railway company (*z*) in such a case is limited as regards animals and goods (*a*), and also, it would seem, as regards loss of life or personal injury to passengers; but the words of the Act are somewhat obscure as regards passengers (*b*).

Other cases of unlimited liability.

The liability of owners navigating their own ships, of pilots, harbour and dock masters acting in charge of ships, of partners in a shipping adventure who work but do not own the ship (*c*), seems to be untouched by the Act, and to be unlimited.

Actions by or against the Crown.

As against the Crown there are in the Act no words limiting the liability of the subject (*d*); and since no action for collision can be brought against the Crown, there is of course no statutory limitation of its liability. In the case of an action against the officer in charge of a King's ship his liability is unlimited; but whether or no damages would in such a case be paid in full depends, apparently, upon the will of the Crown.

Liability for damage to a light-ship.

If a vessel wilfully or negligently injures a light-ship, in addition to her liability for damages, she incurs a penalty of 50*l.* (*e*). Notwithstanding the words of the Act, the liability for damages is limited to the statutory amount (*f*).

(*x*) *The Triune* (1834), 3 Hag. Ad. 114, a decision upon 53 Geo. 3, c. 159.

(*y*) *The Cricket* (1882), 5 Asp. M. C. 53.

(*z*) 34 & 35 Vict. c. 78, s. 12.

(*a*) Including passengers' luggage: *The Stella*, (1900) P. 161.

(*b*) See *per* Lord Blackburn, *Doolan v. Midland Rail. Co.* (1876), 2 App. Cas. 792, 809.

(*c*) As in *Steel v. Lester* (1878), 3 C. P. D. 121.

(*d*) But see *The Zoe* (1886), 11 P. D. 72. The Crown may elect to prove.

(*e*) 57 & 58 Vict. c. 60, s. 666.

(*f*) The Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (62 & 63 Vict. c. 32), s. 3.

The liability of cargo to be arrested in order to compel payment of freight is not affected by the Act (*g*).

Liability of cargo to arrest.

A licensed pilot, who has given a bond in conformity with byelaws made for the purpose under the Pilotage Act, 1913, is not liable for neglect and want of skill beyond the penalty of the bond and the amount of his pilotage fee (*h*). When proceedings are taken against a licensed pilot the Court may determine the amount of his liability, and upon payment of that amount into Court may distribute it rateably among the several claimants (*i*).

Liability of licensed pilots.

Owners, charterers by demise and builders can limit their liability in respect of (1) loss of life or personal injury caused to any person and loss or damage caused to any goods or other things on board their own ships; (2) loss or damage caused to another vessel or to goods or other things on board another vessel, by the improper navigation of their own ships (*k*); and (3) which would appear to include (2), loss or damage caused to any property or rights, ashore or afloat, fixed or movable, by the improper navigation of their own ship (*l*).

Losses in respect of which limitation can be obtained.

Dock, canal, harbour and conservancy owners and authorities can limit their liability in respect of loss or damage caused to any goods, merchandise or other things on board any vessel or vessels (*m*).

There is no limitation in respect of goods transhipped after and in consequence of a collision caused by the fault of the carrying ship, and subsequently lost by the negligence of those on board the ship to which they were transhipped. *The Bernina*, by her own fault, was in collision with *The Bushire*. Without the assent or knowledge of the cargo-owner, and in order to carry the cargo to its destination, the master of *The Bernina* transhipped his cargo from *The*

Goods transhipped after collision and lost.

(*g*) *The Orpheus* (1870), L. R. 3 A. & E. 308.

(*h*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 35 (1).

(*i*) *Ibid.* s. 35 (3). This provision was inserted in consequence of it appearing in the case of *Deering & Sons v. Targett*, (1913) 1 K. B. 129, that no machinery existed for distributing the total amount for which a Trinity House

pilot was liable under sect. 620 of the Merchant Shipping Act, 1894, among the several claimants against him.

(*k*) Merchant Shipping Act, 1894, s. 503 (1), set out *supra*.

(*l*) Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32), s. 2.

(*m*) *Ibid.*

Bernina, which had been injured in the collision, to *The Brixham* and *Avebury*. These two ships subsequently went ashore, and were lost with their cargoes by the negligence of those on board. After their loss, *The Bernina* owners instituted an action to limit their liability, and obtained the usual judgment. The cargo-owners made no claim in the limitation action, but instituted an action against *The Bernina* owners for loss of the cargo. It was held that they were not prevented from recovering damages in this action by the judgment in the limitation action (*n*).

Liability
limited in
contract as
well as tort.

The liability of shipowners is limited in respect of damages recoverable in an action upon the contract to carry as well as in respect of a mere tort. So carriers by sea, or partly by sea and partly by land, may limit their liability as against passengers or cargo-owners (*o*). By the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, by which the right to limit liability given by sect. 503 of the Merchant Shipping Act, 1894, is extended to any loss or damage caused to property or rights of any kind, on land or on water, fixed or movable, it is provided that the limitation shall apply whether the liability arises at common law or under any general or private Act of Parliament, notwithstanding anything contained in such Act (*p*).

Liability
where two
or more
collisions.

The owners of every sea-going vessel (*q*) are liable for losses occurring upon separate occasions to the extent of their statutory liability in each case. The rest of sect. 503 applies to all foreign and registered British ships, whether sea-going or not; but sub-sect. 3 follows the Act of 1854 in confining the operation of the clause in question to sea-going vessels. Where a steamship struck a tug and also the ship to which the tug was passing her tow-line, it was held that the amount for which the steamship was liable was to be calculated as upon one collision and not upon two (*r*). The question is,

(*n*) *The Bernina* (1886), 12 P. D. 36. The bills of lading of *The Brixham* and *The Avebury* excepted negligence of the master and crew, while those of *The Bernina* did not. It was held this was immaterial. *Morewood v. Pollok* (1853), 1 E. & B. 743, is a similar decision upon 26 Geo. 3, c. 86, s. 2.

(*o*) *London & S. W. Rail. Co.*

v. James (1873), L. R. 8 Ch. 241; *The Normandy* (1870), L. R. 3 A. & E. 152.

(*p*) 63 & 64 Vict. c. 32, s. 3.

(*q*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 503 (3), reproducing Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), c. 506.

(*r*) *The Rajah* (1872), L. R. 3 A. & E. 539. Cf. *The Bernina*

whether the two collisions are the result of the same act of negligence; if they are not, sect. 503 (3) applies, but not otherwise. If the wrong manœuvre which caused the first collision might have been corrected before it caused the second collision, it is held that the two collisions are not caused by the same act of negligence, and that the owner of the wrong-doing ship is liable in respect of two, and not only one collision. Thus *The Schwan*, by wrongly starboarding across the bows of *The Albano*, caused a collision between *The Albano* and *The Maggie*. Very shortly afterwards, but not so soon but that the helm might have been altered so as to avoid a second collision, *The Albano* struck *The Delano*. It was held, under the Merchant Shipping Act, 1854, s. 506, that *The Albano* was liable for both collisions (s).

Where a steamship salvor was towing another, and both ran into and damaged a third ship owing to the negligence of the towing ship, it was held that the towing ship was alone liable. The owners of the towing and the towed ship being the same, it was held that their liability was to the extent of 8*l.* per ton upon the tonnage of the towing ship (t). But where, in a case of ordinary towage, the collision was between tug and third ship, and all three were held in fault, it was held that the total liability of tug-owners and tow-owners was measured by the tonnage, not of the tug, but of the tow (u).

Damage by tug or tow : measure of liability.

If the wrong-doing ship is sunk in the collision, or subsequently to it, the owners are not thereby discharged from liability (x).

Owners not discharged by sinking of their ship.

Lord Campbell's Act (y), enabling the representatives of persons killed by negligence to recover damages, is not

Combined effect of 25 & 26 Vict. c. 63, s. 54,

(1886), 12 P. D. 36; *The Douglas* (1886), 7 P. D. 151. In *The Creadon* (1886), 5 Asp. M. C. 585, Butt, J., stated the question to be whether the first collision caused the second. In the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32), there is (s. 3) special provision for several losses occurring on one occasion.

(s) *The Schwan*, *The Albano*, (1892) P. 419.

(t) *The American* and *The Syria* (1874), L. R. 6 P. C. 127.

(u) *The Englishman* and *The Australia*, (1894) P. 239.

(x) *The Normandy* (1870), L. R. 3 A. & E. 152; *The Calcutta* (1869), 17 W. R. 744; *Brown v. Wilkinson* (1846), 15 M. & W. 391. In America, it seems that if the wrong-doing vessel is sunk, the owners are discharged: 2 Parsons on Shipping (ed. 1869), 120-140; 9 U. S. Stat. at Large, 635; *Norwich Steamboat Co. v. Wright*, 13 Wall. 104.

(y) 9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95.

and Lord
Campbell's
Act.

repealed or affected by the Merchant Shipping Acts, except so far as those Acts limit the extent (z) of the shipowner's liability.

"Improper
navigation."

It will be observed that the shipowner's liability in respect of injury to persons or goods on board another ship, or to another ship, is limited only where such injury is caused by "the improper navigation" of his own ship; and that his liability as carrier is limited whether the loss arises from improper navigation, or from some other cause. There has been some doubt as to the meaning of the words "improper navigation." In *The Warkworth*, the effect of the Act was stated by Brett, M. R., to be that the owner's liability is limited for "all damage wrongfully done by a ship to another whilst it is being navigated, where the wrongful action of the ship by which damage is done is due to the negligence of any person for whom the owner is responsible" (a).

In that case the collision was caused by the ship's steam steering gear failing to act at the critical moment. The gear failed to work owing to a certain pin not being in its place. The pin had worked or fallen out of its socket owing to its not being, as it should have been, a "split" pin. It did not appear by whom the improper pin had been inserted. It was held by the Court of Appeal, affirming the decision of Butt, J., that the collision and loss was caused by improper navigation, without actual fault or privity of the owners, and that their liability was limited by the Act. In the Court of Appeal (b) it was held that, the statute being necessary only where there has been negligence for which the owner must be responsible, it must be assumed that the damage done by *The Warkworth* was caused by negligence in fitting the steering gear, for which negligence the owner was responsible. "Improper navigation means improper navigation by the owner of the ship. Now in the eye of the law the owner

(z) *Gladholm v. Barker* (1866), L. R. 1 Ch. 223.

(a) *Per Brett, M. R., The Warkworth* (1884), 9 P. D. 145, 147. As to the meaning of "improper navigation" in an insurance case, see *Canada Shipping Co. v. British Shipowners' Mutual Protecting Association* (1889), 22 Q. B. D. 727;

23 Q. B. D. 342; *Good v. London Steamship Owners' Mutual Protecting Association* (1871), L. R. 6 C. P. 563; *Carmichael v. Liverpool Sailing Ship Owners' Mutual Indemnity Association* (1887), 19 Q. B. D. 242.

(b) (1884), 9 P. D. 145.

does improperly navigate his ship, if, owing to the negligence of some one for whom he is responsible, his ship does damage to another. It is impossible for us to treat 'improper' as equivalent to 'unskilful'; on the contrary, it means 'wrongful.' A person who uses his ship, which is not in a condition to be so employed, does in reality improperly navigate her" (c).

An injury done to a vessel in tow by her tug during the performance of the towage contract was held to be caused by "improper navigation" within the meaning of the Act, and the tug-owner's liability was limited (d).

It seems that a collision between a ship being launched and another afloat, caused by the fault of those in charge of the launch starting her at a wrong time, is injury by improper navigation within the meaning of the Act (e).

The shipowner is liable beyond the sum to which his liability is limited by the statute for interest on the amount of his statutory liability from the date of the collision to payment into Court, whether the claims are in respect of life or property (f). In the case of limited liability this is the rule, whether the ship was earning freight at the time of collision or not (g), and whether there are several claims or only one (h). And he is liable beyond the statutory amount for the costs of the action (i).

Shipowner
liable beyond
the statutory
limit for
interest and
costs.

(c) *Per Bowen, L. J., The Warleworth* (1884), 9 P. D. 146, 148.

(d) *Wahlberg v. Young* (1876), 24 W. R. 846; 4 Asp. M. C. 27, note; 45 L. J. C. P. 783. *Aliter* in Canada: *British Columbia Towage & Transport Co. v. Sewell*, 9 Duval's Rep. 527.

(e) See *The Andalusian* (1878), 3 P. D. 182, where, however, the point, though raised in argument, was not mentioned in the judgment. See also *per Brett, M. R., The Warleworth* (1884), 9 P. D. 145, 147, as to the effect of negligence on shore causing improper navigation on the water.

(f) *The Crathie*, (1897) P. 178; *Straker v. Hartland* (1864), 2 H. & N. 570; *The Amalia* (1865), 5 N. R. 164, note; 34 L. J. Ad. 21; *The City of Buenos Ayres* (1871), 1 Asp. M. C. 169; *African Steam-*

ship Co. v. Swanzy (1856), 2 K. & J. 660; *General Iron Screw Collier Co. v. Schurmanns* (1859), 1 J. & H. 180; *Nixon v. Roberts* (1860), 1 J. & H. 739, are similar decisions under former Acts.

(g) *The Northumbria* (1869), L. R. 3 A. & E. 6. As to the justice of the practice compared with that at common law, see *per Lord Esher, M. R.*, 13 P. D. 118.

(h) *Smith v. Kirby* (1876), 1 Q. B. D. 131. It has been stated that the report of this case is incorrect; that it was not a case of collision, but of a ship capsizing through improper stowage.

(i) *The Dundee* (1830), 2 Hag. Ad. 137; *Ex parte Rayne* (1841), 1 Q. B. 982, are decisions to this effect under former Acts. A like rule prevails in America: *The Wanata*, 5 Otto, 600.

Wrong-doer
is not purged
of his fault
by judgment
in action
limiting his
liability.

The owner of a ship sunk by collision who, admitting that the collision was caused by the fault of his own ship, obtains a decree for limitation of his liability, and pays into Court the statutory amount of his liability, does not thereby escape from the legal consequences of his wrongful act in causing the collision, except so far as the Act expressly relieves him. The owner of a ship sunk in the Thames paid into Court the statutory amount of his liability. His ship was raised by the Thames Conservators (who have statutory powers to raise wrecks and reimburse themselves for the expense of raising them by sale of ship and cargo), he undertaking to pay the cost of raising. It was held that the shipowner was bound to hand over cargo on board to its owner, and that the cargo-owner was not liable to pay him anything by way of salvage or general average contribution (*k*).

Limits of
liability.

Owners can limit their liability to 15*l.* per ton of their ship's tonnage in respect of claims for loss of life or personal injury, and to 8*l.* per ton in respect of claims for loss or damage to property or rights of any kind, whether accompanied by loss of life or personal injury or not (*l*). Claims for loss of life and personal injury fall primarily upon the 7*l.* per ton, and if this fund is not sufficient, rank *pari passu* with the claims for material damage against the 8*l.* per ton in respect of the balance unpaid out of the 7*l.* per ton (*m*). Dock and canal owners and harbour and conservancy authorities can limit their liabilities in respect of losses with regard to which a limitation to their liability has been granted, to 8*l.* per ton of the largest registered British ship which, at the time of such loss or damage occurring, is, or within a period of five years previous thereto has been, within the area over which they perform any duty or exercise any power (*n*).

Calculation
of tonnage.

The tonnage of a ship, for the purposes of limitation of liability, is her registered tonnage, with the addition in the

(*k*) *The Ettrick* (1881), 6 P. D. 127. In *The Crystal*, (1894) App. Cas. 508; *The Harrington* (1888), 13 P. D. 48, the liability of the shipowner for the expense of removing the wreck under 10 & 11 Vict. c. 27, s. 56, and 40 & 41 Vict. c. 16, was discussed.

(*l*) Merchant Shipping Act, 1894, s. 503.

(*m*) *The Victoria* (1888), 13 P. D. 125.

(*n*) Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (62 & 63 Vict. c. 32), s. 2.

case of a steamship of any engine-room space deducted for the purpose of ascertaining that tonnage (*o*). The doubts which formerly existed as to the deduction of navigation spaces and water ballast spaces have been removed by the legislation summarised above.

The tonnage appearing in the register is *prima facie* evidence of the tonnage of the ship, and that all necessary steps have been taken to ascertain the tonnage properly (*p*). But the register is not conclusive, and evidence may be adduced to prove the correct tonnage (*q*). In the case of foreign ships measurement in accordance with sect. 503 (2) (b) and (c) need only be made when the ship's tonnage as stated in her national certificate of registry or other national papers is not accepted as the tonnage denoted in the certificate of registry of a British ship by virtue of an Order in Council made under sect. 84 of the Merchant Shipping Act, 1894 (*r*). The spaces shown by the certificates of registry issued in the countries which have adopted the British system of measurement are now deemed to be certified for the purposes of limitation (*s*). Orders in Council of the following dates were made under former Acts with respect to the ships of the countries named; and under sect. 745 of the Merchant Shipping Act, 1894, these Orders are still in force:—

America, United States, 30th July, 1868, 3rd October, 1895; Austria, 19th August, 1871; Belgium, 17th October, 1884; Denmark, 29th February, 1868, 30th December, 1878, and 21st November, 1895; France, 5th May, 1873; Germany, 23rd July, 1889, and 22nd February, 1896; Greece, 14th August, 1879; Hayti, 3rd May, 1882; Italy,

(*o*) Merchant Shipping Acts, 1894, s. 502 (2); 1906, s. 69; and 1907, s. 1. The rules for ascertaining the register tonnage are to be found in the Merchant Shipping Act, 1894, ss. 77 *seq.*, as amended by the Merchant Shipping Acts, 1906, s. 54, and 1907, s. 1. With regard to the deductions to be made for double bottoms, see *The Zanzibar*, (1892) P. 233.

(*p*) *The Cordilleras*, (1904) P. 90.

(*q*) *The Recepta* (1889), 14 P. D. 131; *The Franconia* (1878), 3 P. D.

164; *The John M'Intyre* (1881), 6 P. D. 200; *The Dione* (1886), 5 Asp. M. C. 347.

(*r*) See *The Cordilleras*, (1904) P. 90.

(*s*) The Merchant Shipping Act, 1906, s. 55. Difficulties which formerly arose with regard to the certification of deductions in the case of foreign ships are removed by this section. See *The Cathay* (1900), 9 Asp. M. C. 100; *The Cordilleras*, *ubi supra*; *S.S. Olga (Owners) v. S.S. Anglia (Owners)* (1905), 42 Sc. L. R. 439.

30th September, 1873; Japan, 27th January, 1885; Netherlands, 3rd May, 1888; Norway, 17th May, 1876, and 2nd February, 1884; Russia, 20th November, 1880; Spain, 17th March, 1875, and 5th August, 1875; Sweden, 17th March, 1875, 3rd May, 1882, and 18th August, 1882.

Liability for damage by ship owned by single ship company.

The liability for damage caused by a ship owned by a limited liability company is ultimately measured by the amount of the assets of the company, amongst which the moneys payable under a policy on the ship will be included. Where the whole assets of the company consist of the ship that does the damage, and she is sunk in the collision, the injured party is without redress.

Combined operation of Act limiting liability and rule as to division of loss.

The effect of the statute limiting owners' liability when it operates in conjunction with the rule as to division of loss is fully discussed in a previous chapter (t). It may here be stated shortly that, where both ships are in fault, and the damage to ship A. and to cargo on board her is greater than that to ship B., and B. limits her liability pursuant to the statute, the damages recoverable by A. will be so much of the sum representing B.'s statutory liability as bears to the entire sum the ratio which the difference between the losses on the two ships bears to the aggregate losses of owners of cargo on board A. and other persons entitled to claim against B.; and, further, that B. can recover nothing (u).

Insurances against loss where liability is limited are valid.

The Act provides (sect. 506) that insurances effected against any of the events in which the liability of the ship-owner is limited, and occurring without actual fault or privity of the owners, shall not be invalid by reason of the nature of the risk. There seems no doubt that such insurances are valid apart from the Act (x).

How protection is obtained.

Limitation of liability is obtained by proceedings instituted for that purpose (y). A writ of summons is issued, directed to all claiming or being entitled to claim for damage

(t) *Supra*, p. 148 *seq.*

(u) *Stoomvaarts Maatschappij Nederlands v. Peninsular and Oriental Steamship Navigation Co.* (1881), 7 App. Cas. 795.

(x) There seems to have been an

idea that such insurances might be invalid for want of interest in the insurer: *Hansard's Parl. Deb.*, vol. 166, p. 2227.

(y) *Merchant Shipping Act*, 1894, s. 504.

or loss arising from the collision. In the statement of claim the relevant facts must be averred, and it must be alleged that liability has been incurred, but it is not necessary for the plaintiff to admit liability, though it would seem necessary that liability should be established before a decree can be obtained (z). On the case coming on for hearing the Court will, if the plaintiff establishes his right to relief, make a decree pronouncing that the plaintiff is entitled to limit his liability, and directing payment into Court of the amount to which his liability is limited, together with interest from the date of the collision to payment in. If money has already been paid into Court in an action *in rem*, that money can be transferred by order to the credit of the limitation suit. After payment in the Court will distribute the fund between the claimants who establish their claims, and will stay proceedings, if necessary, in other Courts.

The Crown may prove against the fund in Court, both by the general law and by the Admiralty Suits Act, 1868 (a). Proof by the Crown.

Where the shipowner has settled out of Court some of the claims in respect of a collision for which his ship was in fault, he is entitled, upon a petition for limitation of his liability, to take into account the sums previously paid in respect of such claims; and that the other claimants are not entitled to any more than they would have recovered if none of the claims had been settled (b). As to the application of the Act where some claimants have recovered damages in an action abroad, see *The Crathie* (c); and if damages have been assessed in a collision action, and subsequently a limitation action is commenced by one of the parties to the collision action, the amount of the assessment in the collision action is not binding on the claimant against the fund in this limitation action (d). Liability where some claims settled.

(z) *Hill v. Andus* (1855), 1 K. & J. 263. See *The Clutha* (1876), 45 L. J. P. 108; *Wahlberg v. Young* (1876), 45 L. J. Q. B. 783; *The Amalia* (1864), Br. & Lush. 151; *The Sisters* (1875), 2 Asp. M. C. 589. Generally, as to the practice in limitation actions, see Williams and Bruce, *Admiralty Practice*, 3rd ed. pp. 377 seq. See also p. 282, *infra*.

(a) 31 & 32 Vict. c. 78, s. 3. *The Zoe* (1880), 11 P. D. 72; *The Winkfield*, (1902) P. 42.

(b) *Rankine v. Raschen*, 4-Ot. of Sess. Cas. 4th ser. 725; *The Foscolino* (1886), 5 Asp. M. C. 420.

(c) (1897) P. 178.

(d) *Van Eijck v. Somerville*, (1906) A. C. 489; 10 Asp. 263.

Right of
bottomry
bond-holder
on freight,
where wrong-
doer limits his
liability.

Where a ship negligently damages another, and the owners of the latter obtain a judgment limiting their liability under the statute, the holder of a bottomry bond on freight earned by the injured vessel is entitled to share rateably in the amount to which the liability of the wrong-doer is limited (e).

(e) *The Empusa* (1879), 5 P. D. 6.

CHAPTER VIII.

TUG AND TOW.

THE principle of Admiralty law stated in a number of the older cases, that where one ship is in tow of another, the two ships are, for some purposes, by intendment of law, regarded as one, the command or governing power being with the tow, and the motive power with the tug, must now be regarded as overruled, and it must now be taken as conclusively established that the question of the identity of the tow with the tug that tows her, is one of fact, not law, to be determined upon the particular facts and circumstances of each case (a). A ship and the tug which has her in tow have often been described as constituting "one ship." This is a figurative expression, and must not be strained to mean more than that the ship and her tug must be regarded as identical, in so far as the two vessels, with their connecting tackle, must be navigated as one ship and, the motive power being with the tug, must manœuvre as if they formed a single ship; and also, in so far as the ship towed, when she has the control of the tug, and the duty of directing the course of the tug, is responsible for the natural consequences of the tug being wrongly steered (b).

For some purposes tug and tow are treated as one ship.

In applying the collision regulations, the Court usually treats the tug and her tow as one ship, and that a steam or sailing ship, according as the towing ship is under steam or not (c). But a tug with a ship in tow has not the same

For the purposes of the regulations.

(a) *S.S. Devonshire (Owners) v. Barge Leslie (Owners)*, (1912) App. Cas. 634, 656, per Lord Atkinson, after reviewing the cases.

(b) *McCowan v. Bain (The Niobe)*, (1891) App. Cas. 401, 407, per Lord Watson.

(c) *The Cleadon* (1860), 14 Moo. P. C. 97; *The American and The*

Syria (1874), L. R. 6 P. C. 127, 132. The same has been held in America: *New York, &c. Co. v. Philadelphia, &c. Co.*, 22 How. 461; *The Ivanhoe v. The Martha M. Heath*, 7 Bened. 213; *The Civitta and The Restless*, 6 Bened. 309; 13 Otto, 699; *The Farewell*, 8 Quebec L. R. 87. There has been

facility of movement as if she were unincumbered. She is not, therefore, in the same degree, mistress of her own movements, and in some cases she cannot, by stopping or reversing her engines, at once stop or back the ship in tow (*d*). This, however, is a question of fact, and if it is practicable to comply with the regulations a tug omitting so to do will be held to blame (*e*). In taking measures to avoid a third vessel a tug has to consider her tow; and a step that would be right, and take her clear, if she were unincumbered, may bring about a collision between her tow and the ship which she herself has avoided (*f*). Although, therefore, it is the duty of a tug with a ship in tow to comply, so far as is possible, with the regulations for preventing collisions, it is also the duty of a third ship to make allowance for the incumbered and comparatively disabled state of a tug, and to take additional care in approaching her (*g*). Thus, a sailing ship has the right of way as against a steamship towing other craft, but she is not entitled under all circumstances to insist upon this right.

American
cases.

The application of this rule, and of others of the collision regulations, as applied to tug, tow, and a third ship, has received more attention in the courts of America than in those of this country. Some of the decisions are not easy to reconcile, but there seems to be a tendency to throw a greater burden upon sailing ships, and other craft which *prima facie* under the regulations have the right of way, than is recognized by the English Courts. This is doubtless owing to the extreme length and unwieldiness of the tows that are common in American waters. The following cases illustrate the general drift of American decisions:—

Where a tug was towing seventeen canal boats, and a sailing ship, with plenty of sea room, had the wind free, held that the latter was in fault for not keeping out of the way of

no decision as to a sailing ship towing another, but there can be little doubt that the principle stated in the text would be applied in this case also.

(*d*) *The Lord Bangor*, (1896) P. 28; *The Syracuse*, 9 Wall. 672; but the "stop and reverse" rule was applied in *The Fred. W. Chase*, 31 Fed. Rep. 91.

(*e*) *The Challenge* and *Duc*

d'Aumale, (1905) P. 198; 10 Asp. 105.

(*f*) See *The Arthur Gordon* and *The Independence* (1860), Lush. 270; *The Kingston-by-the-Sea* (1852), 3 W. Rob. 152.

(*g*) *The American* and *The Syria* (1874), L. R. 6 P. C. 127; *The La Plata*, Swab. 220, 298. Cf. *The Rose Culkin*, 52 Fed. Rep. 328.

the tug and tow (*h*). But where a tug deliberately went on without altering her course, relying upon the sailing ship, which was beating to windward in a river, going about when signalled to do so by the tug, the tug was held in fault (*i*). Again, a schooner was held in fault for not having tacked short of the tug and tow, and the tug for having attempted to go ahead of the schooner (*k*).

A schooner, A., close-hauled, was heading to cross a tug with barges in tow. Owing to the presence of another schooner, B., which had the wind free, and was overtaking the tug, it was, at the outset, the duty of both tug and schooner A. to keep their courses. When B. had cleared both, A. stood on, fouled the tow line, and was struck by the first barge of the tow. It was held, in America, that A. was in fault for not having gone about; and that the tug was also in fault for not having eased so that the tow line might have slacked for A. to pass over (*l*).

On the other hand, a tug is not at liberty to increase unnecessarily the risk and dangers of navigation by having in tow a train of excessive length. Thus a tug having in tow three ocean barges with a scope of hawser between each barge of 150 fathoms, so that she and her tow were together at least two-thirds of a mile in length, was (in America) held in fault for collision with a ship at anchor in Chesapeake Bay (*m*). Though such a tow might be proper in the open sea, it was held to be improper in the Bay, where ships were likely to be met with. Similarly, where a tug in a fog, with two barges in tow on a long tow line, chose to cruise about across the entrance to Boston Harbour, waiting for the fog to clear, and a collision occurred with a ship leaving the harbour, the tug was held in fault for unnecessarily obstructing the fairway (*n*). The risk to other craft which arises from the practice of towage at sea with hawsers of great length throws upon the tug and tow the duty of exercising the greatest

(*h*) *The A. P. Cranmer*, 1 Fed. Rep. 498.
 Rep. 255; 8 Fed. Rep. 523. Cf. (*l*) *The Minnie C. Taylor*, 52
The Mayumba, 21 Fed. Rep. 476. Fed. Rep. 323.
 (*i*) *The Howard Carroll*, 41 Fed. Rep. 882.
 Rep. 159. Cf. *The Marion W. Page*, 36 Fed. Rep. 329. (*m*) *The John H. May*, 52 Fed.
 (*k*) *The Isle of Pines*, 24 Fed. Rep. 378.
 (*n*) *The Admiral Schley*, 115

caution (o) where there is a long tow line out, but such a tow line is not in itself evidence of actual negligence (p).

Result of considering tug and tow to be one ship.

The principle of the tug and her tow being in law one ship has been applied in Admiralty so as to make one of them liable for a collision with a third ship, caused by the fault of the other. Unless the actual wrong-doer in these cases is the servant or agent of the owner of the ship sued, the condemnation in Admiralty of the ship sued conflicts with the principle laid down in some of the cases (q); that the responsibility of the owner at law and the liability of the ship in Admiralty are always concurrent. But as stated above, it is now settled that the liability of the tow for acts of her tug and of the tug for acts of her tow does not depend on any presumption of law, but is a question of fact, and it has become unnecessary to consider and endeavour to reconcile many of the cases mentioned in earlier editions of this work.

The tug is the servant of the tow; meaning of the expression.

It is a term of the ordinary towage contract that, as regards the conduct and navigation of the two ships, the tug and those on board her shall obey the orders of those on board the tow (r). This relationship between the two ships is expressed by the saying, to be met with in some of the cases, "that the tug is the servant or in the service of the tow" (s). This expression has led to the tow being in some cases held liable for the fault of those on board the tug, where such fault led to a collision between the tow and a third ship, without consideration of where in fact the responsibility lay.

In *The Ticonderoga* (t), a vessel in tow of a steamship, which by the terms of her charter-party she was bound to employ, struck and injured a third ship. The collision was caused by the fault of those on board the steamship. It was held by Dr. Lushington that the tow was liable in Admiralty.

(o) *The Gladiator*, 79 Fed. Rep. 445.

(p) *The Patience*, 167 Fed. Rep. 855, at p. 860, and cases there cited.

(q) A principle which has not always been adhered to: *supra*, pp. 85 *seq.*

(r) See *infra*, p. 201.

(s) See *per* Sir R. Phillimore in

The Mary (1880), 5 P. D. 14, 16; *The Siquasi* (1880), 5 P. D. 244; *per* Sir R. Collier in *The American* and *The Syria* (1874), L. R. 6 P. C. 127, 132; and *per* Jeune, P., in *The Englishman* and *The Australia*, (1894) P. 239; *The Adam W. Spies* (1901), 70 L. J. Ad. 25.

(t) (1857), Swab. 215.

"In cases of one vessel coming into collision with another, and the vessel proceeded against having been in charge of a steamer, there can be no doubt whatever that the vessel which has the steamer in her employ is responsible both for her own acts and those of the steamer" (u).

A barque in tow of a tug was approaching the entrance of the Regent's Canal Basin. The tug, without orders from the barque (which was in charge of a compulsory pilot), improperly altered her course, and thereby caused the barque to strike and injure the pier head. It was held by Sir R. Phillimore that the barque and her owners were liable: "The tug was the servant of *The Sinquasi* (the barque), and *The Sinquasi* is responsible for what the tug did" (x). It seems to have been held, also, that under the special circumstances of the case it was the duty of the tug to alter her course without waiting for orders from the tow.

There seems reason to think that the habit of personifying the ship, which, as pointed out above, has produced confusion in other cases, has led to the condemnation in Admiralty of a ship in tow for the fault of those on board her tug, without sufficient consideration of the question whether the wrongdoer is a person for whose acts the owner of the ship sued is liable at law. The *ratio decidendi* in *The Ticonderoga*, *The Sinquasi*, and other cases above cited, seems to have been as follows: the collision was caused by the fault of the tug; the tug is the servant of the tow; therefore the tow is liable for the collision (y).

These cases must be considered as overruled, and the owner of a tow will not be held liable for the acts of her tug, unless those in charge of the tug were in fact acting under the control of the owner of the tow (z). The law as to the liability of tow and tug has thus been stated in the Supreme Court of the U. S. A.: "Cases arise undoubtedly where both the tug and tow are jointly liable for the consequences of

Principle on which tow liable for the acts of her tug.

(u) *Aliter* in Canada, *The Wil- liam*, 4 Quebec L. R. 306.

(x) *The Sinquasi* (1880), 5 P. D. 241.

(y) See also *per* Sir R. Collier in *The American* and *The Syria* (1874), L. R. 6 P. C. 127, 132; *The Mary Hounsell* (1879), 4 P. D.

204.

(z) *S.S. Devonshire (Owners) v. Barge Leslie (Owners)*, (1912) App. Cas. 634, where the cases are reviewed; *The Quickstep* (1890), 15 P. D. 196; *The Niobe* (1888), 13 P. D. 55; *The American* and *The Syria* (1874), L. R. 6 P. C. 127.

a collision; as where those in charge of the respective vessels jointly participate in their control and management, and the master and crew of both vessels are either deficient in skill, omit to take due care, or are guilty of negligence in their navigation. Other cases may well be imagined where the tow alone would be responsible; as where the tug is employed by the master or owners of the tow as the mere motive power to propel their vessel from one point to another, and both vessels are exclusively under the control and direction and management of the master and crew of the tow. . . .

But whenever the tug under the charge of her own master and crew, and in the usual and ordinary course of such an employment, undertakes to transport another vessel which, for the time being, has neither her master nor crew on board, from one point to another over waters where such accessory power is necessarily or usually employed, she must be held responsible for the proper navigation of both vessels. . . .

Assuming that the tug is a suitable vessel, properly manned and equipped for the undertaking, so that no degree of negligence can attach to the owners of the tow on the ground that the motive power employed by them was in an unseaworthy condition, the tow, under the circumstances supposed, is no more responsible for the collision than so much freight. And it is not perceived that it can make any difference in that behalf that a part or even the whole officers and crew of the tow are on board, provided it clearly appears that the tug was a seaworthy vessel properly manned and equipped for the enterprise" (b).

The extent of the liability of a shipowner for engaging an unseaworthy tug does not appear to have been fully considered in this country; in other respects this statement seems to be a correct exposition of the principles upon which the respective liabilities of tug and tow are to be determined.

Statement of
the respective
liabilities of
tug-owners
and tow-
owners for
collision with
another ship:

When a collision takes place between a tug and a tow and a third ship, without fault on the part of the third ship, when the collision is (1) with the tug by her fault alone, or (2) with the tow by her fault alone, no difficulty arises; each is alone liable for the whole of the damage caused by her fault.

(b) *Per* Clifford, J., in *Sturgis v. Boyer*, 24 How. 110; quoted and adopted by Butt, J., in *The Quickstep* (1890), 15 P. D. 196, 201.

(3) When a collision takes place between a tug having another vessel in tow and a third ship by the fault of the tow, without fault on the part of the third ship, the tow-owners are liable in every case, but the tug-owners may also be liable. If the collision is caused by the fault of those in charge of the tow in wrongly directing the course of the tug, both tug and tow are liable jointly and severally to the third ship for the whole damage. The tug-owners are liable as employers of the actual wrongdoer, the helmsman of the tug, and not the less because their servant is bound by the towage contract to obey those on board the tow (c). The tow-owners are liable because it was the wrong order given by their servant that caused the collision. Each is liable for the whole loss because they are joint tort-feasors; the old Admiralty rule of division of loss did not apply to such a case (d), nor does sect. 1 of the Maritime Conventions Act, 1911 (e). If the collision is caused by a faulty manœuvre of the tow, causing the tug to collide, it is conceived that the tug-owner is not liable, even when his servants on the tug are under the control of those in charge of the tow; in such case the tug is an innocent ship forced into doing damage by the fault of another (f), and is no more liable than the tow is in the converse case of the innocent tow being put into collision by the fault of her tug (g).

(4) When a collision takes place between the tow and a third vessel by the fault of the tug only, the liability of the tug-owner is clear. The liability of the tow-owner depends on whether the facts and circumstances show that the tow-owner had control of the navigation of the tug either directly from the tow or by those in charge of the tug being his servants or agents (h). If he has control, the tow-owner is also liable. Thus where the tug-owner was bailee for hire

(1) with the tug by the tug's fault;
(2) with the tow by the tow's fault;
(3) with the tug by the tug's fault;

(4) with the tow by the tug's fault;

(c) See *Fenton v. Dublin Steam Packet Co.* (1838), 8 A. & E. 835. The tug-owner can recover all he has to pay to the third ship from the tow-owner: see *infra*.

(d) *S.S. Devonshire (Owners) v. Barge Leslie (Owners)*, (1912) App. Cas. 634.

(e) But see further as to this, *infra*, p. 200.

(f) *The Hibernia* (1859), 4 Jur.

N. S. 1244; *The Sisters* (1876), 1 P. D. 117; *The Moxey*, Abbott, 73.

(g) See (4), *infra*.

(h) *S.S. Devonshire (Owners) v. Barge Leslie (Owners)*, (1912) App. Cas. 634; *The Quickstep* (1890), 15 P. D. 196; *The Niobe* (1888), 13 P. D. 55. Compare language and reasoning of Lord Tenterden in *Laugher v. Pointer* (1826), 5 B. & C. 547, 578; and of

of a barge which came into collision by the fault of those in charge of his tug and of the third vessel, it was held that as his servants had navigated his barge from the deck of the tug he was liable (*i*). On the other hand, where a barge in tow of a tug under a contract, by the terms of which the master and crew of the tug became the servants of the barge-owners during the towage, but were in fact employed and subject to dismissal by the tug-owner alone, and where the sole control of the navigation of the tug and tow was with the tug, the tow-owners were held not to be liable for a collision caused by the negligence of the master and crew of the tug (*k*). If the tow-owner is also liable, then he and the tug-owner are liable jointly and severally for the whole of the damage to the third ship (*l*).

(5) with the tug or tow or with both by the fault of both.

(5) Where a collision takes place between a third ship without blame on her part and either the tug or the tow, or both, by the fault of both tug and tow, both the tug-owner and the tow-owner are liable jointly and severally for the whole of the damage to the third ship; either or both may be sued (*m*).

When third vessel also to blame.

When in any of the above cases the third ship is also to blame for the collision, the liability to make good the loss or damage will be in proportion to the degree in which either the two or the three vessels in collision were in fault (*n*).

Effect of M. C. Act, 1911, on rights of innocent third parties damaged by collision.

The terms of sect. 1 of the Maritime Conventions Act, 1911, are "when by the fault of two or more vessels damage or loss is caused to one or more of those vessels," liability shall be apportioned. It would therefore seem that when by the fault of two vessels damage is caused to an innocent third vessel, her existing right to claim jointly or severally against the two wrongdoers is unaffected; for she is not one of *those* vessels by whose fault damage was caused. Such was the view apparently taken in the proceedings which

Clifford, J., in *Sturgis v. Boyer*, 24 How. 110, 122 (Supreme Court of U.S.A.), quoted *supra*, p. 197.

(*i*) *The Umona*, (1914) P. 141.

(*k*) *The Adriatic and The Wellington* (1914), 30 T. L. R. 699.

(*l*) *S.S. Devonshire (Owners) v. Barge Leslie (Owners)*, (1912) App. Cas. 634; but see *infra* as

to the possible effect of the Maritime Conventions Act, 1911.

(*m*) *S.S. Devonshire (Owners) v. Barge Leslie (Owners)*, *ubi supra*.

(*n*) Maritime Conventions Act, 1911, s. 1. See *The Cairnbahn*, (1914) P. 25, and *supra*, p. 143 *seq.* *The Umona*, (1914) P. 141.

arose out of the collision between the steamer *Cairnbahn* and a barge in tow of the tug *Nunthorpe* by the joint fault of the steamer and the tug. The owners of the innocent barge sued the owners of the steamer and recovered the whole of their damage from them, though the owners of the tug were added as defendants (*o*). The words of the section seem clear, but if they can be shown to be in any way ambiguous, reference can be had to the Convention referred to in the preamble to assist the interpretation. From the terms of the Convention it would seem that the intention of the contracting States was that innocent third parties should only recover from each delinquent party an amount proportionate to the fault of the latter (*p*).

It is an implied term in the ordinary contract of towage, as interpreted in this country, that the tug shall exercise reasonable care and skill in its performance (*q*), and that she shall implicitly obey the orders of the ship in tow (*r*). If no orders are given by the latter, it is the duty of the tug to take such a course as will carry herself and her tow clear of collision and other dangers (*s*); but it seems to have been held in the Privy Council (*t*), that it was not a breach of duty for the tug to pursue a course which, though imprudent, the pilot of the tow acquiesced in.

The mutual duties of tug and tow.

Notwithstanding the rule that, under ordinary circumstances, the tug must obey the orders of the ship in tow (*u*), it is obvious that in crowded waters, with ships passing and repassing in all directions, frequent and sudden alterations in

Duty of tug in crowded waters.

(*o*) *The Cairnbahn*, (1914) P. 25, see p. 35.

(*p*) The Collision Convention, Art. 4, *infra*, p. 550.

(*q*) *The Ratuta*, (1898) App. Cas. 513.

(*r*) *The Christina* (1852), 3 W. Rob. 27; 6 Moo. P. C. 371; *Smith v. St. Lawrence Tow Boat Co.* (1874), L. R. 5 P. C. 308; *The Julia* (1860), Lush. 224; *Spaight v. Tedcastle*, *infra*; *The Isca* (1887), 12 P. D. 34; *The Niobe* (1888), 13 P. D. 55.

(*s*) *Spaight v. Tedcastle* (1881), 6 App. Cas. 217; *The Siquasi* (1880), 5 P. D. 241; *The Altair*, (1897) P. 105; *The Civita* and *The Restless*, 13 Otto, 699.

(*t*) *Smith v. St. Lawrence Tow Boat Co.* (1874), L. R. 5 P. C. 308. See *per* Lord Blackburn, *Spaight v. Tedcastle* (1875), 6 App. Cas. 217, 222. In America considerable responsibility is thrown on the tug. Thus it has been held that it is the duty of the tug to be acquainted with the waters she navigates, and to keep her tow clear of local dangers: *The Lady Pike*, 21 Wall. 1; *The Webb*, 14 Wall. 406; *The Margaret*, 4 Otto, 494.

(*u*) *The Christina*, 3 W. Rob. 27, 33; in *The Duke of Sussex*, 1 W. Rob. 270, the decision was to the same effect, and upon similar grounds.

the course of the tug must be made to clear passing craft. Under such circumstances it is the duty of the tug to keep herself and her tow clear of other vessels without waiting for orders from her tow (x).

Duty of tug
to warn tow
of danger.

Although it is the duty of the tug to obey the orders from the ship in tow, her duty does not end here. It has been already stated that, in the absence of orders from the tow, she is bound to show proper care and skill in the course she takes and in the performance of the towage service. And if the orders she gets from the ship in tow are manifestly wrong, it is her duty, even if the orders are given by a pilot in charge of the tow, to warn the tow of her danger. "The vessel and the lives of the crew are not to be risked because there is a law which imposes the ordinary responsibility upon one individual. . . . It is not for the steamer (the tug), knowing the danger, to maintain, as it were, a sulky silence, and make herself, as it were, instrumental in the destruction of life and property" (y). But except in case of manifest incapacity or error on the part of the pilot, it would seem that it is not the duty of the tug to exercise a discretion as to carrying out the pilot's orders; nor would she be justified in disobeying them, although there may be risk of collision in carrying them out.

Duty of tow
to warn tug
of danger.

It is similarly the duty of the tow, when the tug has control of the navigation, to take steps to warn the tug of approaching danger; if the tow can control the movements of the tug, it is her duty to do so, but if the movement of the tug is so sudden that those on board the tow cannot control it, the tow-owner will not be liable for the acts of the tug (z).

Duties of
the tug.

The tug must be sufficient as regards seaworthiness, equipment and power to perform the service she undertakes (a), in weather and circumstances reasonably to be expected (b).

(x) See *The Singuasi* (1880), 5 P. D. 241, *supra*, p. 197; *The Isca* (1887), 12 P. D. 34; *The India*, Ad. Div. 7th Dec. 1886.

(y) *The Duke of Manchester* (1846), 4 Not. of Cas. 575, 582; 5 Not. of Cas. 470. The tug was, in this case, performing a salvage service.

(z) *The Niobe* (1888), 13 P. D. 55; *The Stormcock* (1885), 5 Asp.

M. C. 470; *The Energy* (1871), L. R. 3 A. & E. 48.

(a) *The United Service* (1883), 8 P. D. 56; 9 P. D. 3; *The Minnehaha* (1860), Lush. 335; *The Ratata*, (1898) App. Cas. 513; *The Undaunted* (1886), 11 P. D. 46.

(b) *The Maréchal Suchet*, (1911), P. 1; *The West Cock*, (1911) P. 23, aff. 208.

The relation between the shipowner who employs the tug-owner and the tug-owner who undertakes to provide a tug for a given service, the choice of a tug remaining with the tug-owner; there is to be implied, whether it is called a duty or an obligation or a warranty, an engagement of an absolute nature that the tug shall be in all respects absolutely fit for the service (*c*). This obligation may amount to a common law warranty of fitness, but the point is not finally decided (*d*).

If the tug supplies the tow-rope she is responsible for its sufficiency (*e*). She must show ordinary skill, care, and diligence in performing the towage service (*f*). She must generally obey the orders of the tow as regards course, speed, alterations of the helm, stopping and going ahead (*g*), and also orders with reference to the tow-rope, its scope, making it fast and casting it off (*h*). If the course is left to her, she is responsible for its safety (*i*). It is her duty to keep a vigilant look-out, both on her own account and on account of her tow, since the latter cannot always see ahead (*j*). If she is compelled to cast off her tow, to save herself from collision, or for any other reason, it is her duty to pick up her tow again as quickly as possible (*k*). If she casts off her tow unjustifiably, she will be liable for resulting damage (*l*).

A tug, being overrun by a heavy sailing ship in tow with canvas set, cast her off, and shortly afterwards the tow ran into a light-ship. She paid for the damage to the light-ship and sued the tug. It was held that the tug was justified in casting her off, and was not liable (*m*).

The duty of the ship in tow is to direct the course, and Duties of the tow.

(*c*) *The West Cock*, (1911) P. 208; cp. *Robertson v. Amazon Tug and Lighterage Co.* (1881), 4 Asp. M. C. 496.

(*d*) *Ibid.* So held by Evans, P., but the Court of Appeal left the point open.

(*e*) *The Robert Dixon* (1879), 4 P. D. 121; 5 P. D. 54; *The Echo*, 7 Bened. 70; *The A. R. Wetmore and The Epsilon*, 5 Bened. 147 (American).

(*f*) *The Julia* (1860), Lush. 224; *The Ratata*, *supra*; *The Maréchal Suchet*, (1911) P. 1; *The West Cock*, *supra*; *British Columbia*

Towage and Transport Co. v. Sewell, 9 Duval's Rep. (Canada) 527.

(*g*) See cases, pp. 201 *seq.*

(*h*) *The Energy* (1871), L. R. 3 A. & E. 48; *The Julia*, Lush. 224.

(*i*) *The Altair*, (1897) P. 105.

(*j*) *The Jane Bacon* (1879), 27 W. R. 35.

(*k*) *The Annapolis and The Golden Light* (1860), Lush. 355.

(*l*) *The Undaunted* (1886), 11 P. D. 46.

(*m*) *The Loyal and The Challenger*, 14 Quebec L. R. 135.

generally to give orders as to the conduct and navigation of the two ships (*n*); to keep a good look-out, and, in case of danger, to attract the attention of the tug by hailing or in some other manner, so as to warn her of the danger (*o*); to follow in the wake of the tug as nearly as possible (*p*); to have proper lights exhibited (*q*); in frequented waters to have the tow-rope so made fast that it can be readily cast off (*r*); and to give the order to slip when necessary (*s*).

In *The Jane Bacon* (*t*), a ship in tow was held liable for the capsizing of a smack by the tow-rope, which caught her mast. The tug altered her helm and passed on one side of the smack; the tow, instead of following in the tug's wake, altered her helm in the opposite direction and endeavoured to pass on the other side of the smack. The tow-rope, being thus spread, caught the smack's mast and capsized her.

Mutual rights and liabilities of tug and tow in case of collision :
(1) between themselves,
(2) between one of them and a third ship.

The mutual rights and liabilities of the tug and tow in case of a collision between themselves, and in case of a collision between either of them and a third ship, have been the subject of decisions, and appear to be as follows:—

As between the tug and her tow, the latter would be solely liable for a collision caused to the tug entirely by the improper orders of those on board the tow, whether the collision were with the tow, or with a third ship. Thus, where a ship, having engaged a tug off Dungeness to take her to Gravesend, ordered her to take the tow-line on board at a time when the state of the weather made it unnecessary and dangerous for her to do so, it was held that the ship in tow was liable for a collision between herself and the tug which occurred whilst the line was being passed from the one ship to the other (*u*).

(*n*) This would appear to be confined to towage in the open sea.

(*o*) *The Niobe* (1888), 13 P. D. 55. It was here held that this was a duty of the tow as regards a third ship with which she was in collision.

(*p*) *The Jane Bacon* (1879), 27 W. R. 35; *The Stranger*, Brown, Ad. 281; *The Maria Martin*, 12 Wall. 31; *The Ciampa Emilia*, 53 Fed. Rep. 155; *The Jacob Brando*, 39 Fed. Rep. 831; *The Sagua*, 42 Fed. Rep. 461; as to damage done by the sudden sheering of a

disabled ship in tow, see *The Edwin Hawley*, 41 Fed. Rep. 606.

(*q*) *The Mary Hounsell* (1879), 4 P. D. 204.

(*r*) *The Jane Bacon* (1879), 27 W. R. 35.

(*s*) *The Energy* (1870), L. R. 3 A. & E. 48.

(*t*) (1879), 27 W. R. 35. Cf. *The W. A. Levering*, 36 Fed. Rep. 511.

(*u*) *The Julia* (1861), Lush. 224; and see *The Robert Dixon* (1879), 4 P. D. 121; 5 P. D. 54.

The tug-owners are not responsible for a collision resulting from towage having become impossible from no fault of theirs (v).

The tow-owner is responsible to third parties for a collision caused by the inefficiency of a tug endeavouring to carry out orders given from the tow (x), but whether the tow-owner would be responsible merely because the tug he had hired was inefficient does not appear to have been decided in this country, though in America he is held liable (y).

Where a collision takes place owing to defects in the tug, e.g., by the towing gear breaking, the tug-owner can, unless his obligation amounts to an absolute warranty of fitness, a point not yet decided, satisfy the obligation upon him and avoid liability by proving that the unfitness or inefficiency was not discoverable or preventable by any care or skill, or by his proving that he was not aware of the unfitness or inefficiency, and that it could not be discovered by an ordinary inspection. On proof of the defect, and that the defect caused damage, the onus shifts, and the plaintiff need not prove negligence (z).

In the case of an ordinary towage, if no orders are given by the tow as to avoiding a third ship, and a collision occurs between the tow and the third ship, it has been held that the tow, being in fault for giving no orders, cannot recover against the tug, either for injury which she herself received in the collision, or for damages which she was compelled to pay to the third ship. A barque in charge of a compulsory pilot was being towed up the Thames. She fell in with a brig working up the river against a head wind. The pilot gave no orders to the tug, and the tug improperly attempted to cross the bows of the brig. The barque cast off her tow-line and attempted to go under the brig's stern, but failed to clear her. The collision might have been avoided if the tug had cast off the tow-line. The pilot gave no orders

(v) *The Maréchal Suchet*, (1911) P. 1, 12;

(x) *The Belgic* (1875), 57, note.

(y) *Sturgis v. Boyer*, 24 How. 110. See *supra*, p. 197; but see *The Ocean Wave* (1870), L. R. 3 P. C. 205, 208, a compulsory pilot-

age case, where it was said the owners would have been responsible for improper selection of the tug.

(z) *The West Cock*, (1911) P. 25, C. A. 208.

throughout. The barque was sued by the brig, and damages were recovered against her. In an action brought by the barque against the tug, it was held that she could not recover these damages, being herself partly in fault for the collision (*a*).

Exceptions in the towage contract.

All the obligations usually implied in the contract of towage can be got rid of or modified by express and apt terms in the contract just as the obligations of a shipowner may be got rid of or modified by the terms of the charter-party or contract of affreightment (*b*). Whether the tug-owner can relieve himself of liability for damage arising from defects in his vessel or her equipment by anything less than words so plain and unambiguous that they must bear the meaning contended for, and not merely bear it on one of two possible constructions, is not yet finally decided (*c*).

Damage by tug to tow.

Where the tug, in performance of a towage or salvage service, negligently damages her tow by collision, or in any other way, she forfeits her right to towage or salvage remuneration (*d*). And in an action upon the towage contract she cannot recover salvage for services rendered to the tow in consequence of collision (*e*).

Contribution between tug and tow.

If a tug or tow is damaged in a collision by the fault of both, she can recover a proportion of her damage from the other (*f*). Where a collision has taken place between a tug or a tow and a third vessel, for which both tug and tow are to blame, and the third vessel has recovered her loss against one only of the two vessels to blame, that vessel can treat the amount she has paid to the third vessel as part of the damage arising from the collision for which the other wrong-doer is partly liable (*g*). In a similar case, where as between themselves either tug or tow is solely to blame, the innocent

(*a*) *The Energy* (1871), L. R. 3 A. & E. 48. And see *Smith v. St. Lawrence Tow Boat Co.* (1874), L. R. 5 P. C. 308; *The Robert Dixon* (1879), 4 P. D. 121; 5 P. D. 54. As to County Court jurisdiction for breach of towage contract, see *The Isca* (1887), 12 P. D. 34.

(*b*) *The West Cock*, (1911) P. 23, 31.

(*c*) *Ibid.* C. A. 208, 221, 228.

(*d*) *The Christina* (1852), 3 W.

Rob. 27; *The Altair*, (1897) P. 105; *The Duke of Manchester* (1846), 2 W. Rob. 470, as to salvage. But see *The Sweepstakes*, Brown, Ad. 509, where a set-off was allowed.

(*e*) *The Hjemmaet* (1880), 4 Asp. M. C. 274; 5 P. D. 227.

(*f*) *The Harvest Home*, (1905) P. 177.

(*g*) *The Cairnbahn*, (1914) P. 25.

party can of course recover all she has had to pay, as well as any damage to herself, from the guilty party.

Thus where a tug, A., was in fault for a collision between her tow, B., and a third ship, C., and C. was also in fault for having an improper light, it was held in America that the rule of equal division of loss applied as between C. and A. (*h*). Where a pilot cutter was made fast alongside a tow, and owing to the negligence of the tugs, and of those in the pilot cutter in not slipping their rope, the pilot cutter was sunk by a third vessel, it was held that the pilot cutter was entitled to recover half her damages from the tugs (*i*).

The right of a tow to contribution or indemnity from her tug may, however, be affected by the terms of the towage contract. These are usually very large, and exonerate the tug-owner from almost any kind of loss, and sometimes go so far as to indemnify the tug-owner against the result of his negligence (*k*). Thus where a tug was held liable in an action by the owners of cargo on a barge which was in collision with the tug, the owners of the tow under such a contract were held liable to indemnify the tug-owner in respect of damages and costs (*l*).

Right affected
by towage
contract.

Where the tug-owner contracts with the tow-owner that he will not be responsible or liable for any damage, injury or loss, however occasioned, no contract of indemnity by the tow-owner for damage suffered by the tug-owner from a collision caused by the fault of his servants can be implied (*m*).

In some harbours (*n*) the local Act requires that the tug belonging to the harbour authority shall be employed, or, if not employed, shall be paid for by ships entering the harbour. There has been no decision as to the liability of the shipowner for damage done by his ship when in tow of such a tug. It would seem that the principle applied in the case of compulsory pilotage would exempt him from liability. The liability of the harbour authority would depend upon the

Tug employed
compulsorily.

(*h*) *The James Gray* and *The John Frazer*, 21 How. 134.

(*i*) *The Harvest Home*, (1905) P. 177; 10 Asp. 118.

(*k*) As in *The Tasmania* (1888), 13 P. D. 110.

(*l*) *The Millwall*, (1905) P. 155; 10 Asp. 15, 110, 113.

(*m*) *The Devonshire* and *St. Winifred*, (1913) P. 13.

(*n*) Cf. the Llanelly Harbour Act, 59 & 60 Vict. 186 (local).

question whether the crew of the tug were their servants or agents or not. In some cases the harbour tug is chartered and not owned by the harbour authority.

Tug and tow both in fault; judgment against both, jointly and severally.

Where both tug and tow are in fault for a collision with a third ship, judgment goes against both ships in Admiralty, as it would at law against the owners, for the whole of the damage, jointly and severally. An application to limit the judgment against each ship, tug and tow, to half the loss (as is the practice in America (o)) in the first instance, will be refused. The Admiralty rule of division of loss, as applied in this country, has, it was said, nothing to do with such a case (p).

Between tug and tow.

The case of collision between a tug and her tow presents no difficulty. Each vessel must exhibit ordinary care and seamanship in keeping clear of the other, and must discharge such obligations as the towage contract casts upon her. A schooner, in casting off from her tug, ran into her stern, by reason of her not porting and also by reason of the tug not starboarding, as was proved to be the custom in America. Both were held to be in fault (q). So a tug, in assisting to dock a big liner, got too close to her propeller, which was being worked from time to time, and was struck by it. She was held to be in fault for being in such a position (r).

Two tugs in charge of one ship.

Where two or more tugs are engaged in towing the same ship, difficult questions arise as to their respective liabilities for damage to or by themselves or the ship. In an American case where the ship was put ashore by the negligence of one or both tugs, both of which were acting under the command of the master of one of them, both were held liable (s).

Responsibility for employment of tug.

The responsibility for the employment of a tug in ordinary cases rests with the master, whether the ship is in charge of a pilot or not. But if the employment of a tug is necessary for the safety of the ship herself, or for the safety of other

(o) *Infra*, p. 217.

(p) *The Avon and The Thomas Joliffe*, (1891) P. 7; *The Englishman and The Australia*, (1894) P. 239. For a case of all three in fault, judgment by default for the whole loss against tow, and judgment for half the loss against tug, see *The Morgengry and The Black-*

cock, (1900) P. 1. But see *supra*, p. 200.

(q) *The William W. Wood*, 66 Fed. Rep. 601.

(r) *The City of New York*, 54 Fed. Rep. 181.

(s) *The Arturo*, 6 Fed. Rep. 308, where there is an interesting judgment of Lowell, C. J.

ships, the master would not be justified in refusing to employ a tug upon the pilot's advising him to do so (*t*). If a vessel in tow is under way when she ought not to be moving, as in a dense fog or in a crowded dock at night-time, the presence on board of a compulsory pilot would not, it seems, exempt the owners from liability for damage done by her (*u*).

The liability of the owner of the tug for damage done to the tow, by improper navigation of the tug in the performance of the towage contract, is limited by the statute in this as in other cases of collision (*x*).

Limitation of tug-owner's liability.

The owners of a ship that takes another in tow are not the less liable for a collision between the two ships, caused by the negligence of the towing-ship, because she is engaged as a salvor or quasi-salvor. The steamship *Thetis* fell in with *The Sardis* in a disabled state. The master of *The Thetis* agreed to tow the latter to port. He had received no instructions from his owner as to offering towage or salvage service to other ships, but the policy of insurance effected upon *The Thetis*, and her bills of lading, contained provisions as to her performing such services. In attempting to take *The Sardis* in tow *The Thetis* negligently ran into and sank her. It was held that the master of *The Thetis* was acting within the scope of his employment in undertaking to tow *The Sardis*, and her owners were held liable for the collision (*y*).

Owners of a salvor towing the salved ship are liable for collision between salved ship and salvor.

In one case it was contended that, the tug being the servant of the tow, the doctrine of common employment (*z*) applied, as between the tug and the servants of the owners of the tow, so as to prevent the owners of the tug recovering against the tow and her owners damages for a collision between tug and tow caused by the fault of the tow. This argument did not succeed (*a*).

Doctrine of common employment does not apply as between tug and servants of owners of tow.

For a collision caused by the fault of the tug in taking

Improper number of ships in tow.

(*t*) *The Julia* (1860), Lush. 224; *Burrell v. Macbrayne* (1891), 18 Ct. of Sess. Cas. 4th ser. 1048; *The Gertor* (1894), 7 Asp. M. C. 472. Cf. *The Agamemnon*, 1 Quebec L. R. 333 (duty of ship at anchor, and driving, to employ tug); *The Arran*, 9 Quebec L. R. 278 (cable parting).

M.

(*u*) See *The Borussia* (1857), Swab. 94.

(*x*) *Wahlberg v. Young* (1876); 45 L. J. C. P. 783.

(*y*) *The Thetis* (1868), L. R. 2 A. & E. 365.

(*z*) *Priestly v. Fowler* (1837), 3 M. & W. 1.

(*a*) *The Julia* (1860), Lush. 224.

an improper number of vessels in tow either between the vessels in tow, or between one of them and a stranger, the owners of the tug would *primâ facie* be liable to the owners of the tow upon the towage contract (*b*). It is not unusual for tug-owners to relieve themselves from this liability by expressly contracting that they shall not be answerable for the negligence of their servants on board the tug (*c*).

The mere fact that one of the vessels in tow strikes and damages another vessel in tow, raises no presumption of negligence on her part. It was so held in a case where two vessels were in tow of the same tug, without objection on the part of that one of them which was nearest the tug, and this vessel took the ground and was run into by the other astern (*d*).

In a Canadian case (*e*) a sailing ship in tow with her sail set was held in fault for a collision with an overtaking and passing steamship, against which she was driven by another ship in tow of the same tug striking her on her quarter.

The tug can be sued *in rem* for damage to the ship in tow received in a collision caused by negligent towage, whether such damage is sustained by the tow in a collision with a third ship or with the tug (*f*). And the tug may be sued in Admiralty for damages which the tow has been compelled to pay to a third ship for a collision caused by the fault of the tug (*g*).

Attempts have been made to try the question between tug and tow, as to the ultimate liability for collision with a third ship, by means of the third-party procedure under the Judicature Act. The existing rules do not enable a third party to be brought in for such a purpose (*h*).

(*b*) See *The United Service* (1883), 8 P. D. 56; 9 P. D. 3.

(*c*) *The United Service*, *ubi supra*.

(*d*) *Harris v. Anderson* (1863), 14 O. B. N. S. 499.

(*e*) *The Farewell*, 8 Quebec L. R. 87.

(*f*) *The Nightwatch* (1860), Lush. 542; *The Julia*, *ibid.* 224.

(*g*) *The Energy* (1871), L. R. 3 A. & E. 48. It seems that the Admiralty Court has jurisdiction

in a claim for damage caused by negligent towage, whether such damage is received in a collision or not: see *supra*, p. 38, note (*a*). The Admiralty jurisdiction of the United States Courts includes all claims arising out of towage contracts: 2 *Parsons on Ship*. (ed. 1869), 176, 188; *The Webb*, 14 Wall. 406.

(*h*) See *infra*, p. 280. As to the practice in America, see *The Hudson*, 45 Fed. Rep. 162.

Admiralty jurisdiction in case of negligent towage.

Third-party procedure.

Where the liability is reasonably in doubt, tug and tow may properly be made co-defendants (*i*).

The decisions of the American Courts as to the duties and liabilities of a tug and her tow are very numerous. They are not altogether consistent with the English cases, which were for some time dominated by the doctrine—often a misleading one—that the tug is the servant of the tow. The different character of much of the towage service in American waters, where towage of hulks and large barges at sea on tow ropes of great length (*k*) is common, and where large fleets of barges are constantly being navigated in harbours and on inland waters in charge of one or more tugs, probably accounts for the somewhat different view of the law taken by the American Courts.

Liability of
tug and tow
in America.

In accordance with the principles laid down in *Sturgis v. Boyer*, in some cases both tug and tow (*l*), in others the tug alone (*m*), or the tow alone (*n*), have in America been held liable for damage done to other ships by tug or tow. Where both the tug and her tow have been sued and held liable in Admiralty, the decree has gone against each of them for half the damages, with power for the plaintiff to have recourse against either of them for the balance, in case of failure of the other to pay her full moiety of the damages (*o*). The English Court has refused to adopt this practice (*p*).

American
cases.

(*i*) *The River Lagan* (1886), 6 Asp. M. C. 281. Cf. *The Mystery*, (1902) P. 115.

(*k*) *The Mount Hope*, 84 Fed. Rep. 910; and *The John H. May*, 52 Fed. Rep. 882 (the tow lines and tows were two-thirds of a mile long).

(*l*) *The Coleman and The Foster*, Brown Adm. 456; *The Maybey and The Cooper*, 14 Wall. 204; *The Shubert and The Einar*, 45 Fed. Rep. 497; *The Alex. Folsom and The Mary B. Mitchell*, 44 Fed. Rep. 932 (tug in fault for speed, tow for being under sail); *The City of Alexandria*, 31 Fed. Rep. 427.

(*m*) *Smith v. The Creole and The Sampson*, 2 Wall. C. C. Rep. 485; *The Ogemaw*, 32 Fed. Rep. 919. Cf. *The William*, 4 Quebec L. R. 306.

(*n*) *The Cambridge, The Under-*

hill, and *The Chase*, 4 Bened. 366; *Cushing v. The Owners of The John Fraser*, 21 How. 184; *The Clarita and The Clara*, 23 Wall. 1; *The Galatea*, 2 Otto, 439; *The Imperial*, 38 Fed. Rep. 614. In *The R. B. Forbes*, 1 Sprague, 328, and *The Rescue*, 2 Sprague, 16, the tug was held liable for collision between a tow, lashed alongside, and a third ship.

(*o*) *The Virginia Ehrman and The Agnese*, 7 Otto, 309; *The City of Hartford and The Unit*, 7 Otto, 323; *The Atlas*, 3 Otto, 302; *The Juniata*, *ibid.* 337; *The Sterling and The Equator*, 16 Otto, 647; *The Webb*, 14 Wall. 406; *Munks v. Jackson*, 66 Fed. Rep. 571.

(*p*) *The Avon and The Thomas Joliffe*, (1891) P. 7; *The Englishman and The Australia* (No. 1), (1894) P. 239.

American
cases.

The vast amount of trade that is done in America by towage, some of it of a character that is almost unknown in this country, has created a class of cases which have no parallel in our books. In these many novel points of law and seamanship have been decided. For example, whether a tow of two-thirds of a mile in length is lawful and proper (*q*), whether it is necessary that there should be some means of communication between tug and tow, whether fog-horns or signals must be sounded on all or any of the craft in tow (*r*), whether the tow line must be cast off in certain cases to enable other craft to cross the line of the tow, are amongst the questions which are frequently discussed in American Courts, but seldom in the Courts of this country. A few of the cases illustrating points that may arise in our own Courts, and the application of the principles laid down in *Sturgis v. Boyer*, are given below.

Tug alone
liable.

A barque and a schooner in tow of two tugs, and with their officers and crews on board, were navigating New York harbour. Those on board the vessels in tow took no part in the navigation as regards directing the courses of their tugs, and both were taken by their tugs into water where under the local rules they had no right to be, and where they fouled each other. It was held that, though both tugs were in fault, neither of the ships in tow was in fault, and that neither of them was liable in damages to the other (*s*). There can be little doubt that, in this country, each would have been liable for half the loss of the other.

Where a tug, for her own purposes, and without the consent of the other ship, took hold of a vessel alongside a wharf to move her, it was held that the tug was liable for any damage the vessel might do, whether those on board her might have avoided it or not (*t*).

Where one member of the tow got adrift and did damage whilst the tug was "singling out" her tow, it was held that

(*q*) *The H. M. Whitney*, 86 Fed. Rep. 697; *The Gladiator*, 79 Fed. Rep. 445; *The Mount Hope*, 84 Fed. Rep. 910.

(*r*) *The Raleigh*, 44 Fed. Rep. 781; *The H. M. Whitney*, 77 Fed. Rep. 1001; 86 Fed. Rep. 697; *The*

Harold, 84 Fed. Rep. 698; *The W. H. Gratwick*, 81 Fed. Rep. 590.

(*s*) *The Doris Eckhoff*, 50 Fed. Rep. 134.

(*t*) *The Ben Hooley*, 6 Fed. Rep. 318.

the tug was liable (*u*). In another case the tug was held liable, because her master had negligently moored to a wharf three of his barges, one of which got adrift and fouled a ship at anchor (*x*). In another (*y*) case the tug was held liable, because she had more craft in tow than she could manage. So where a steamship, in order to extricate herself from danger caused by a heavy raft in tow of two tugs, put her engines full speed ahead, broke the raft up, and forced her way through it, it was held that she was not liable for the damage to the raft which the tugs were unable to control (*z*).

American cases.

In a heavy gale blowing across their courses, the tows of two tugs sagged to leeward and damaged each other. Both tugs were held in fault for not keeping the tows clear of each other (*a*). A tug with a long tow rounding a bend in a river, where there was a cross set of tide, was held in fault, as against a third ship, for allowing her tow to sag across the river so as to occupy half the starboard side of the fairway (*b*).

Where the pilot of a barque in tow, who was specially employed to take her through a narrow and dangerous passage, being in charge of both tug and tow, proposed to go on one side of a rock, but the tug, seeing other craft in the way, without orders from the pilot, and in spite of his remonstrances, altered her course in order to go on the other side of the rock, upon which the barque took the ground, it was held that the tug was liable for the damage (*c*).

If the tow-line parts, by reason of the tug suddenly going ahead and putting an unnecessary strain upon it, and damage is done to a third ship, the tug is liable (*d*); but if it carries away because it is improperly made fast on board the tow, the tow is liable (*e*).

(*u*) *The Blanche L.*, 68 Fed. Rep. 939; *The R. C. Veit*, 56 Fed. Rep. 122, where the tow got adrift by her own fault.

(*x*) *The P. I. Nevius, The Wide-awake*, 67 Fed. Rep. 158.

(*y*) *The Richmond, The E. Heipershausen*, 63 Fed. Rep. 1020.

(*z*) *The Athabasca*, 45 Fed. Rep. 651.

(*a*) *The Robert Burnett*, 46 Fed. Rep. 415.

(*b*) *The Alicia A. Washburn*, 19 Fed. Rep. 788.

(*c*) *The Strathay*, 27 Fed. Rep. 562.

(*d*) *The Young America*, 26 Fed. Rep. 174.

(*e*) *The Natchez*, 73 Fed. Rep. 267.

American
cases.

A tug, being unable to come to terms with her tow, a schooner, as to the charge for towing, cast off the tow-line, so that the schooner went against a dock and was damaged. The tug was held liable (f). So where a tug salvor started to tow off a lee shore without getting the ship's anchor, and set another ship adrift by fouling her anchor with the anchor of the first ship, the tug was held liable for the consequent loss of the second ship (g).

A tug took her tow so close to a ship at anchor that, on suddenly changing her course, the tow-line parted, and the tow fouled the ship at anchor. The tug was held liable (h).

A tug was held in fault for a collision between her tow and a third ship, caused by a squall which might have been foreseen, and guarded against by anchoring (i).

A long and heavy tow of barges in a winding river, with a strong tide, requires two or more tugs to control it; one of these is, in America, styled the principal or governing tug and the other the "helper." A principal tug, lying at anchor, with her tow astern, has been held liable for not causing her "helper" to sound a fog-horn, in accordance with local rules, as she lay alongside the two (k).

A tug and the third ship were both in fault for a collision between the tow and third ship. The tow sued the tug, and a decree passed for the whole of the loss against the tug (the third ship not being sued (l)).

Where a collision may be avoided by casting off the tow line, it is the duty of the tug (or tow) to do so (m).

Tug and tow
both liable.

Two tugs were moving an ocean steamship in New York harbour. The officers and crew were on board the liner, but were acting under the orders of the master of one of the tugs, who was in charge of the operation. It was held that the tow and both the tugs were liable for a collision between the tow and a third ship. The owner of the two tugs had undertaken, as "independent contractor," to move the steamship,

(f) *The A. M. Ball*, 43 Fed. Rep. 170.

(g) *The Addie B.*, 43 Fed. Rep. 163.

(h) *City of Philadelphia v. Gavagnin*, 62 Fed. Rep. 617.

(i) *The Young America*, 25 Fed. Rep. 207.

(k) *The Raleigh and The Niagara*, 44 Fed. Rep. 781. Cf. *The James Berwind*, 44 Fed. Rep. 693, where the tug and tow were under way.

(l) *The Troy*, 28 Fed. Rep. 861.

(m) *The F. W. Wheeler*, 78 Fed. Rep. 824.

and the tug-master was in charge of the whole manœuvre. Nevertheless, the tug-owners and the owners of the steamship were held liable as joint tort-feasors. Both ships being damaged, the tow and the two tugs were held liable in equal shares for the damage to the third ship, and the damage to the tow was divided between herself and the two tugs (*n*). American cases.

So where the pilot of a barque in tow was in charge of the navigation of tow and tug, and a collision occurred between the barque and a third ship, both tug and tow were held liable (*o*).

Where a tug was partly in fault for damage to the tow by collision with a pier, the rule of division of loss was applied as between tug and tow, the damage having been caused by the fault of both (*p*). And so where a schooner lashed alongside her tug was damaged by collision with a third ship, both she and her tug were held in fault for navigating in water forbidden by local rules (*q*).

A barge made fast to a tow, unknown to the tug; she broke adrift and did damage. It was held that the tug was not liable (*r*). So also where a lighter was fast to a ship in tow, which gave the order to the tug to go ahead before the lighter had cast off; the lighter being damaged, it was held that the tug was not liable (*s*). Tow alone liable.

Where a tug was so small that she was controlled by the helm of her tow, which by her weight took charge of her when the course was altered, it was held that the tow was alone liable (*t*).

A tug brought a ship alongside a schooner at a wharf. The ship in tow negligently put out her fender so that it broke the schooner's rail. The ship was held alone in fault (*u*).

A schooner in tow, with her mainsail set, was struck by a

(*n*) *The Express*, 52 Fed. Rep. 890.

(*o*) *The Maggie S. Hart*, 38 Fed. Rep. 765.

(*p*) *The Jonty Jenks*, 54 Fed. Rep. 1021.

(*q*) *The Maryland*, 19 Fed. Rep. 551.

(*r*) *Anglo-Australian St. Nav.*

Co. v. Cornell Steamboat Co., 32 Fed. Rep. 798.

(*s*) *The Jack Jewett*, 23 Fed. Rep. 927.

(*t*) *Biscell v. The Alexander*, 3 Fed. Rep. 671.

(*u*) *Wilsey v. The Celestial Empire*, 2 Fed. Rep. 651.

American
cases.

gust of wind, sheered out of the wake of the tug, and struck a bridge. She was held alone in fault (x).

A large steamship was being hauled out of her dock in New York harbour, stern foremost, by a tug. She put her engines astern, and, gathering too much way, struck and damaged the dock. It was held that the tug was not liable (y).

A large steamship was approaching her pier under her own steam, in charge of a pilot, and assisted by tugs ahead and astern. She struck and sent adrift a float moored near the pier. Held that the steamship, and not the tug, was liable (z).

The Supreme Court (a) has held that the tow is identified with her tug to the extent "that she cannot escape the consequences, if the collision was caused wholly or in part by the fault of that (her own) tug."

It has been held that a tug with a fleet of barges or canal boats in tow, though she is not, like a common carrier, liable as insurer of the cargo on board her tow (b), is generally liable for damage to the craft in tow or the cargo on board them, and also for damage to third ships by the tow (c).

In America it has been held, in the case of a tug with a number of barges and river craft in tow, that it is the duty of the tug to arrange and make up her tow; to see that the tow-lines are sufficient and properly made fast; and generally to superintend and navigate the tow, so that other ships are not injured by it, and so that the barges do not injure each other (d).

Tug-owners are held liable for getting their tows ashore (e);

(x) *Stretch v. Tug Margaret*, 2 Fed. Rep. 255. And see next page as to the duty of the tow to follow in the tug's wake.

(y) *The John A. Carnie*, 49 Fed. Rep. 682.

(z) *Car Float*, No. 4, 89 Fed. Rep. 877.

(a) *The L. P. Dayton*, 13 Dav. 337.

(b) *The Stranger*, Brown, Ad. 281; *The Margaret*, 4 Otto, 494.

(c) See 1 Parsons on Shipping, ed. 1869, 536; *The Quickstep*, 9

Wall. 665. As to the duty of the tug with regard to the making up and navigation of the tow, see *infra*.

(d) *The Quickstep*, 9 Wall. 665; *The Stranger*, Brown, Ad. 281; *The Cayuga*, 16 Wall. 177; *The Francis King*, 7 Bened. 11; *The Syracuse*, 12 Wall. 167.

(e) *The Arturo*, 6 Fed. Rep. 308 (two tugs towing one ship); *The J. W. Paxon*, 24 Fed. Rep. 302; *The E. E. Simpson*, 60 Fed. Rep. 452; *The S. W. Morris*, 59 Fed.

for attempting to cross a dangerous bar in heavy weather, so that the ship in tow capsizes and is lost (*f*); for continuing to tow an ice-barge full of water, so that she broke in half and damaged another of the barges in tow (*g*). If the crew of a ship in tow abandon her for their own safety, it has been held in America that the towage contract is at an end (*h*); but if, through stress of weather or otherwise, the tow gets ashore, it is the duty of the tug to stand by and to do her best to extricate her (*i*). If a collision or other damage is caused by the tug suddenly going ahead and putting an unnecessary strain upon the other craft (*k*), or upon the tow-line, so that it parts, the tug is liable (*l*). American cases.

A craft known by her owner and by the tug-owner to be unseaworthy was taken in tow and sank. It was held that both were liable and the loss was divided (*m*). So, where both tug and tow attempted to force their way through ice which damaged the tow (*n*), and where a craft in tow struck a pier partly by the tug's fault, and partly by her own fault in having no man at the helm (*o*), the loss was held to have been caused by the fault of both.

In America, the rule of division of loss is applied in cases of collision between a tug or tow and a third ship, in a manner for which there is no precedent in this country. Thus we have seen that where tug and tow are both in fault, the decree, in America, goes in the first instance against each for half the damage to the third ship. So where the tug was in fault for a collision between tow and third ship, and the third ship was also in fault, the tug was held liable for half the damages (*p*). But tug and tow are jointly and severally liable Division of loss.

Rep. 616; *The S. S. Wilhelm*, *ibid.* 169; *aliter*, if the danger is unknown: *The Pierrepoint*, 42 Fed. Rep. 687.

(*f*) *Humboldt Lumber, & Co. Association*, 60 Fed. Rep. 428. Cf. *The Bordentown*, 40 Fed. Rep. 682; *The Young America*, 25 Fed. Rep. 207.

(*g*) *Scott v. Cornell Steamboat Co.*, 59 Fed. Rep. 638.

(*h*) *The W. J. Keyser*, 56 Fed. Rep. 731.

(*i*) *The Young America*, 26 Fed. Rep. 174; *The Pres. Briarly*, 24

Fed. Rep. 478.

(*k*) *The Luckenbach*, 15 Fed. Rep. 924.

(*l*) *The Alpha*, 27 Fed. Rep. 759.

(*m*) *The William Kraft*, 33 Fed. Rep. 847.

(*n*) *The E. A. Packer*, 42 Fed. Rep. 92.

(*o*) *The Jonty Jenks*, 54 Fed. Rep. 1021. Cf. *Conolly v. Ross*, 11 Fed. Rep. 342; *The William Murtaugh*, 3 Fed. Rep. 404; *The William Cox*, 9 Fed. Rep. 672 (cases of loss divided).

(*p*) *The James Gray* and *The*

for the damage to the third ship, and the latter may sue either or both (*q*). It is held that, as between the two wrongdoing ships, the right of apportioning the damages is a substantial right, and, if one only is used, she has a right to have the other brought in as a co-defendant; and that, in order to avoid multiplicity of suits, all the wrong-doers should be sued in the first instance (*r*).

In this country, where all three ships, tug, tow, and third ship, were in fault for a collision between tug and third ship, judgment went against tug and tow, jointly and severally, for half the loss (*s*). So in America, where tug and tow are both in fault for damage to the tow by breach of the towage contract, whether by collision (*t*) or not (*u*), the rule of division of loss is applied.

Tow in collision after being cast off by tug.

A tug in a gale being over-run by her tow, cast her off. The tow afterwards came into collision with a lightship, for which, in an action by the owners of the latter, she was held in fault. She subsequently sued the tug, alleging that the collision was caused by the effect of the tow ropes, after being cast off, upon her steering. It was held by a Canadian Vice-Admiralty Court that the tug was justified in casting off her tow under the circumstances; it being also found as a fact that the tow was guilty of negligence, and that her steering was not affected by the tow-rope (*x*).

John Fraser, 21 How. 184. In *The Energy*, L. R. 3 A. & E. 48, this point was not considered.

(*q*) *The Charles Allen*, 11 Fed. Rep. 317; *The Atlas*, 3 Otto, 302; *The Franconia*, 16 Fed. Rep. 149; *The Annie Williams*, 20 Fed. Rep. 866; although the fault of one is gross, and of the other slight: *The Franconia*, *supra*.

(*r*) *The Hudson*, 15 Fed. Rep. 162. For other American cases on

these points, see *supra*, p. 211.

(*s*) *The Englishman* and *The Australia*, (1894) P. 239; *The Avon* and *The Thomas Joliffe*, (1891) P. 7.

(*t*) *The Jonny Jenks*, 54 Fed. Rep. 1021; *The Express*, 52 Fed. Rep. 890.

(*u*) *The William Kraft*, 33 Fed. Rep. 847.

(*x*) *The Loyal v. The Challenger*, 14 Quebec L. R. 135.

CHAPTER IX.

FOREIGN SHIPS—FOREIGN LAW—FOREIGN JUDGMENTS.

IN collision cases where one or both the ships are foreign, questions frequently arise as to the law applicable to the case, and particularly as to the application of British statutes to foreign ships. The general rule is that municipal laws are binding upon the subjects of the state by which they are enacted everywhere, but upon foreigners only when they are within its jurisdiction (*a*). The principle which governs questions of jurisdiction, and remedies, has been thus stated: "In regard to the merits and rights involved in actions, the law of the place where they originated is to govern . . . but the forms of remedies and the order of judicial proceedings are to be according to the law of the place where the action is instituted, without any regard to the domicile of the parties, the origin of the right, or the country of the act" (*b*).

Law applicable to foreign ships; collision in foreign waters.

Before the passing of the Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), foreign laws, and the general maritime law, touching the steps to be taken to avoid collision, and the extent of the shipowner's liability, differed from the law of this country, and questions of difficulty arose in the case of collisions where one or both ships were foreign as to the law applicable to the case. By the Act above mentioned it is provided, with reference to the rule of the road and the extent of shipowner's liability, that in the Courts of this country foreign ships shall be judged by the British law. There are, however, several points upon which the decisions above referred to (*c*) are material, and as to

(*a*) As to the limits of British jurisdiction, see *The Saxonia* and *The Eclipse* (1862), Lush. 410; *The Annapolis* and *The Johanna Stoll* (1860), Lush. 295; *Regina v. Keyn*, *The Franconia* (1877), 2 Ex. D. 63; of Admiralty jurisdiction, *infra*, p. 220.

(*b*) Story's Conflict of Laws, Ch. 14, § 558, 7th ed. p. 702. And see

Don v. Lippman, 5 Cl. & Fin. 1. So a foreigner in France suing for a collision is subject to the disabilities (*fin de non recevoir*) of the Code de Commerce, Arts. 435, 436; Abordage Nautique, Caumont, §§ 82, 83.

(*c*) See *infra*, p. 228, as to these cases.

which there is some doubt whether British or foreign law is to prevail. As stated above, the general rule—where the matter is not expressly provided for by statute—is, that as to rights and merits the law of the place of collision (*lex loci*), and as to remedies and procedure the law of the tribunal (*lex fori*), is to prevail. The form in which the question may arise at the present day is indicated below.

Jurisdiction of Admiralty Courts where both the ships are foreign.

Actions for collision are said to be *communis juris*, and the Admiralty Court never refused to entertain an action merely because both ships were foreign (*d*), or their owners not British subjects (*e*), or because the collision occurred in foreign waters (*f*).

Limits of Admiralty jurisdiction.

The original jurisdiction of the Admiralty probably extended over all waters where the tide ebbs and flows and where great ships are accustomed to go (*g*); but after the enactment of 13 Ric. 2, st. 1, c. 5, and 15 Ric. 2, c. 3, and until the modern statutes enlarging the jurisdiction of the Admiralty Court (*h*), the Court was liable to be restrained by prohibition from exercising its jurisdiction if the collision occurred in the body of a county (*i*). Where not prohibited the Admiralty Court appears to have exercised the

(*d*) *The Johann Friedrich* (1828), 1 W. Rob. 35; *The Charkieh* (1873), L. R. 4 A. & E. 120. And see *The Evangelistria* (1877), 25 W. R. 255 (ownership of a foreign vessel); *In re Smith* (1876), 1 P. D. 300; *The Griefswald* (1859), Swab. 430; *The Vivar* (1877), 2 P. D. 29. And *per Story, J.*, *The Invincible*, 2 Gall. 29; *The Anna Johnson*, 2 Stuart's V. Ad. Rep. (Canada) 43.

(*e*) In *The Courier* (1862), Lush. 541, neither of the ships was owned by British subjects, and the collision was in foreign waters.

(*f*) In *The Diana* (1862), Lush. 539, decided since 24 Vict. c. 10, the ships were owned by British subjects, and the collision was in foreign inland waters.

(*g*) See *per Blackburn, J.*, *Reg. v. Anderson* (1868), L. R. 1 C. C. R. 161; *Reg. v. Carr* (1883), 10 Q. B. D. 76.

(*h*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65); Admiralty Court Act, 1861 (24 & 25 Vict. c. 10). And see pp. 286 *seq.*,

infra.

(*i*) *Martin v. Green, The Dolphin and The Barbados Merchant* (1664), 1 Keb. 730; prohibition to the Delegates, Ad. Ct. Rec. Miscell. Bdes., Ser. IV. bdl. 17; *Violet v. Blague* (1619), Cro. Jac. 514; *Violet c. Blake*, Ad. Ct. Rec. Libels, File 78, No. 18; File 79, No. 100, was a suit for detainee of a ship in the Thames. The case referred to in the report in Cro. Jac. 514, as of a collision at Blackwall, was probably either *Hall c. Cook*, Ad. Ct. Libels, File 78, No. 72, or *Goodyne c. Tompkins*, *ibid.* Miscell. Bundle, 250. In *Velthasen v. Ormsley* (1789), 3 T. R. 315, where the collision was in the Thames, Lord Kenyon granted a prohibition, although the owner of the ship sued was unknown and there was no remedy at common law, refusing to follow *Wharton v. Pitz*, 1 Salk. 548. So, in *Dorington's Case*, Moore, 916; *The Charming Nancy and The Dawkins* (1771), Inst. Pap. 54; *The Smyrna* and

jurisdiction even where the collision was in the body of a county, at least where the ship sued was foreign, and the plaintiff would otherwise be without a remedy (*k*). At the present day there is no doubt that the Admiralty Division has jurisdiction, and will exercise it, whether the collision occurs within the ebb and flow of the tide or not, and whether in British or foreign waters or on the high seas (*l*). The liability of a foreign ship that has injured property of a British subject in any part of the world to be detained until satisfaction is made to the sufferer is referred to below.

It has been held (*m*) that a County Court has Admiralty jurisdiction in respect of damages by a collision which occurred in a dock connected with a tidal river (the Thames) by a lock. And it seems that the Admiralty Division of the High Court also has jurisdiction in such a case (*n*). Dr. Lushington exercised the jurisdiction in the case of a collision in foreign inland waters—the Great North of Holland Canal (*o*).

The common law Courts have jurisdiction, whether the ships are British or foreign, and whether the collision occurs in foreign waters, or elsewhere. “The right of all persons, whether British subjects or aliens, to sue in the English Courts for damages in respect of torts committed in foreign countries, has long since been established; and, as is observed in the note to *Mostyn v. Fabrigas* (*p*), there seems to be no

Jurisdiction at common law when the collision is abroad.

The Vrouw Maria (1801), Inst. Pap. 92; *Twynneham v. Harman* (1774), Marsden, Ad. Cas. 130, all collisions in the Thames, and in *Elwill v. Wiggett* (1664), collision in Weymouth harbour, the Admiralty was prohibited; and later in *The Public Opinion* (1832), 2 Hag. 398; *The Eliza Jane* (1837), 3 Hag. 335; *The Lord of the Isles*, cited in *The Public Opinion* (1832), 2 Hag. 398, 402.

(*k*) *Fairless v. Thorsen, The Good Intent and The Prince Christian* (1774), Marsden's Ad. Cas. 130. As to Admiralty jurisdiction generally, see *De Lovio v. Boit*, 2 Gall. 398; *The Volant* (1842), 1 Not. of Cas. 503, 509. As to Canadian inland waters, see 40 Vict. c. 21 (Canada); *The Picton*, 4 Duval's (Canada) Rep. 648.

(*l*) *The Diana* (1862), Lush. 539 (collision in the Great North of Holland Canal); *The Courier* (1862), Lush. 541; *The Mali Ivo* (1868), L. R. 2 A. & E. 356; as to colonial waters, see *The Peerless* (1860), Lush. 30; as to county court jurisdiction in case of a collision in a London dock, see *Reg. v. Judge of City of London Court* (1882), 8 Q. B. D. 609.

(*m*) *Reg. v. Judge of City of London Court* (1882), 8 Q. B. D. 602.

(*n*) Under the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 7.

(*o*) *The Diana* (1862), Lush. 539.

(*p*) (1774), 1 Smith's L. C. 11th ed. 591.

reason why aliens should not sue in England for personal injuries done to them by other aliens abroad, when such injuries are actionable both by the law of England, and also by that of the country where they are committed: and the impression which had prevailed to the contrary seems erroneous" (*q*).

Liability of
owners
resident
abroad.

Neither in the Admiralty, nor in the King's Bench Division, can a personal action for damages in respect of a collision occurring below low-water mark of the coasts of the United Kingdom be brought against a person not domiciled or ordinarily resident within the jurisdiction, unless the writ of summons can be served within the jurisdiction (*r*).

Detention of
foreign ship
that has
injured prop-
erty of a
British
subject.

A foreign ship that has injured a British ship or property of a British subject in any part of the world may be detained if found within three miles of the coasts of the United Kingdom so as to compel her owners to abide the event of any action in the courts of this country for damage caused by her (*s*). And it seems that in such a case she is liable in an action *in rem* (*t*). But the ship cannot under this Act be detained in respect of personal injury (*u*); and it has been doubted whether she could be seized whilst passing the coasts of this country on a foreign voyage (*x*).

Action in this
country for
damage to
pier abroad.

The precise question whether an action can be maintained in any Court in this country for a wrongful act to a pier or breakwater forming part of the soil of a foreign country has not been decided. It arose in *The M. Moxham* (*y*), but by consent of the parties, no objection to the jurisdiction was taken. James and Mellish, L. JJ., expressed doubts as to the jurisdiction (*y*), and more recent decisions have not been

(*q*) *Per* Selwyn, L. J., *The Halley* (1868), L. R. 2 P. C. 193, 202, 203. And see *per* Brett, M. R., *Chartered Mercantile Bank of India v. Netherlands India St. N. Co.* (1883), 10 Q. B. D. 537; and *per* Lord Herschell, *British S. A. Co. v. Cia. de Moçambique*, (1893) App. Cas. 617 *seq.*

(*r*) See below, p. 266.

(*s*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 688. *The Christiana* (1830), 2 Hag. 183, is a decision under the similar Act, 1 & 2 Geo. 4, c. 75. In America any property of the owners of the

ship sued which is found within the jurisdiction may be seized: 2 Parsons on Ship. (ed. 1869), 390.

(*t*) *The Bilbao* (1860), Lush. 149.

(*u*) *Harris v. Owners of the Franconia* (1876), 2 C. P. D. 173.

(*x*) See *per* Cockburn, C. J., *Reg. v. Keyn* (1877), 2 Ex. D. 63, 218.

(*y*) (1876), 1 P. D. 107. For a full statement of the law as to the competence of English Courts, see the judgment of Lord Herschell, C., in *British S. A. Co. v. Cia. de Moçambique*, (1893) App. Cas. 602.

such as to encourage resource to the Admiralty Court for the trial of actions purely local in their nature.

Before the enactment of the existing International Regulations for Preventing Collisions at Sea, the question of negligence in all cases of collision was tried by the general maritime law: in other words, by those rules of seamanship, which, it was assumed, were common to seamen of all nations (z). Thus the rule that a vessel on the port tack should bear up for another on the starboard tack was applied to all ships whether British or foreign. And at the present day, so far as the Regulations do not extend, or where they are not applicable, the test of negligence is the same; namely, the general practice of seamen, or, as it is sometimes called, the general maritime law.

Law of negligence and of liability for negligence applicable to foreign ships.

The law applicable in this country to cases of collision on the high seas, where one or both ships are foreign, is the maritime law as administered in England, and not the law of the flags (a). By that law the shipowner is liable for the negligence of the master and crew of his ship (b). And it appears that the liability is the same whether the action is in a court having Admiralty jurisdiction or not (c). In the courts of this country, the rights and duties of persons navigating vessels, whether in British territorial waters or on the high seas, are the same. It is their duty so to exercise their right as to do no damage to the property of others (d). Thus an English telegraph company sued and recovered

Liability for negligence by maritime law.

(z) See *The Dumfries* (1857), Swab. 63, 125.

(a) *The Johann Friedrich* (1839), 1 W. Rob. 35; *The Dundee* (1823), 1 Hag. Ad. 120; *The Leon* (1881), 6 P. D. 148; *The Milan* (1860), Lush. 388; Foote's Priv. Internat. Law, pp. 308-403. And see per Lindley, L. J., *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, 545.

(b) Per Brett, M. R., *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 537; Coke's Inst. 4th Pt. fo. 146. *Semble*, only where the master and crew are his agents. It may be noted that the form of sentence by which, according to the ancient

practice of the Admiralty Court, the owners intervening for their interest in an action *in rem* were condemned in damages, was, that the collision having been caused by the fault or negligence of the master and crew of the ship sued, her owners, therefore, were liable. There is no reference in the sentence to the liability of the owners or of the ship being founded upon the fact of the crew being the agents of the shipowner. See, however, *Waltham v. Mulgar* (1606), Moo. 776.

(c) Per Brett, M. R. (1883), 10 Q. B. D. 537; Coke's Inst. 4th Pt. fo. 146.

(d) Per Willes, J., *Submarine Telegraph Co. v. Dickson* (1863), 15 C. B. N. S. 759, 779.

damages against the owners of a foreign vessel for injury done to the company's cable, which lay at the bottom of the sea, by the ship's anchor (*e*).

In the case of *The Leon* (*f*), in an action *in personam* in the Admiralty Division by the owners of a British ship against the owners resident in England of a Spanish ship for damages in respect of a collision between the two ships on the high seas, it was pleaded that the negligence on the part of the Spanish ship (if any) was negligence of the master or crew, for which, by the law of Spain, the master or crew, and not the shipowners, were liable. It was held by Sir R. Phillimore that by the general maritime law, and by the law of England as administered in Admiralty, the defendants, the foreign owners, were liable.

Again, in a case before the Court of Appeal, an English company, registered under the Companies Act, 1862, were sued in tort by the owners of cargo on board a vessel that was sunk in a collision caused partly by the fault of the defendants' ship, which had a foreign register and sailed under the foreign flag (*g*). The defendants admitting that they represented the foreign owners for the purposes of the action, it was held that they were liable. And it was said that even without the admission the decision would probably have been the same, the foreign owners being bare trustees for the defendants (*h*).

In an action in a common law court by the owners of a British ship against a French subject for a collision with a French ship on the high seas, it was pleaded that the injury complained of happened out of British jurisdiction, and that it was not committed by the defendant personally, but by the master of the French ship; that the defendant was a French subject; that by the law of France he was not liable for the acts of the master; and that by the same law a French corporation, who were the proprietors of the ship, and the

(*e*) *Submarine Telegraph Co. v. Dickson*, 15 C. B. N. S. 759.

(*f*) 6 P. D. 148.

(*g*) To enable her to trade with the Dutch East Indies she was registered in Holland in the name of a Dutch company, the members of

which were the same as those of the English company.

(*h*) *Chartered Mercantile Bank of India, &c. v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, 545.

master's employers, were alone liable. The plea was held good (i).

The principle upon which the last-mentioned case was decided was clearly expressed by James, L. J., in *The M. Moxham* (k): "Liability of one man to answer for the acts of another in matters of tort seems a thing which cannot be carried by the agents into a foreign country. If I take my coachman to France, and he in driving my carriage injures a carriage in France, I do not take with me the law of *respondeat superior* so as to make me liable. It seems to me that the law of the country in which we are trying the question does not apply, but it is the law of the place where the act is done which does apply."

The liability depends, in some cases, upon the law of the place where the collision occurs, and of the country to which the ship belongs. If it occurs in the territorial waters of a country by the law of which an owner is not liable for the wrongful acts of his officers or crew, it seems that he would not be liable in the courts of this country (l). For the question whether a particular person is liable for an act which is wrongful by the law of the place where it is committed depends on the substantive law of the country where the act is done (m). In such a case, therefore, it is the *lex loci* and not the *lex fori* which governs. Nor is the defendant liable, in this country, for a collision in a foreign country unless the negligence causing the collision is that of a person for whose acts he is responsible by the law of England. "No action can be maintained in the courts of this country on account of a wrongful act either to a person or to personal property committed within the jurisdiction of a foreign country, unless the act is wrongful by the law of the country where it is committed, and also by the law of this country" (n).

Application of foreign law as to liability for negligence.

In *The M. Moxham* an English company, possessed of a

(i) *General Steam Navigation Co. v. Gillou* (1843), 11 M. & W. 877, 895.

(k) (1876), 1 P. D. 107.

(l) See per Brett, M. R., *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, 536.

(m) Per Mellish, L. J., *The M. Moxham* (1876), 1 P. D. 107, 113.

(n) Per Mellish, L. J., in *The M. Moxham* (1876), 1 P. D. 107, 111. And see per Lord Blakburn, *The Vera Cruz* (1884), 10 App. Cas. 59, 72; *Carr v. Francis Times & Co.*, (1902) App. Cas. 176.

pier in Spain, instituted an action in the Admiralty Court against a British ship for negligently injuring the pier. The shipowners, by their answer, pleaded that by the law of Spain they were not liable for the negligence of the crew in the navigation of the ship. The Court of Appeal held that, assuming the Court had jurisdiction, the law of Spain was applicable, and that the plea was good (*o*).

So where the collision occurred in foreign waters by the fault of a pilot, the employment of whom was compulsory by the foreign law, the owners were not liable in the courts of this country; but they will now be liable here, if by the law of the place of collision they would be liable in the foreign court (*p*).

Order of
claims against
a ship is *lex*
fori.

It has been held, where there are several claims against a ship, that they must rank and be paid according to British law, the matter being governed by the *lex fori* (*q*).

Rule of the
road for
foreign ships.

The statutory rules as to steps to be taken to avoid collision, which were contained in the Merchant Shipping and other Acts previous to 1862, were held not to apply in the case of a collision between two foreign ships, or a British and a foreign ship, on the high seas. The question of negligence in such cases was tried by the general maritime law, under which the steps required to be taken to avoid collision were not always identical with those required by the British statute. A ship, therefore, meeting another on the high seas, had to obey one rule, if both ships were British, and another, and a different rule, if one were not British (*r*). This state of things, which could not fail to be productive of collisions, led to the adoption of the existing International Regulations (*s*). No question as to the rule of the road, or as to the law applicable to the particular case, such as arose in the cases decided under former Acts, can now be raised

(*o*) *The M. Moxham* (1876), 1 P. D. 107.

(*p*) By reason of the defence of compulsory pilotage having been abolished as from January 1st, 1918, by the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 15. *The Halley* (1868), L. R. 2 P. C. 193. And see *The Guy Mannering* (1882), 7 P. D. 52, 132; *The Augusta* (1886), 6 Asp. M. C. 58, 161.

(*q*) *The Union* (1860), Lush. 128.

(*r*) *The Dumfries* (1857), Swab. 63; *The Saxonia* and *The Eclipse* (1862), Lush. 410; *The Zollverein* (1857), Swab. 96; *The Elizabeth* (1860), 3 L. T. 159. The general maritime law was deemed to have embodied the "port tack" rule—that a sailing ship on the port tack should give way to another on the starboard tack. See *The Dumfries*, *ubi supra*.

(*s*) As to the circumstances under which these regulations were promulgated, see *infra*, p. 297 *seq.*

with regard to vessels of the states enumerated in the Order in Council (*t*).

Foreign ships, equally with British ships, are bound to know and observe local regulations for preventing collisions in force in various rivers and harbours of this country (*u*).

Application of British local regulations to foreign ships.

Foreign municipal regulations as to ships' lights, and rules to be observed in navigating foreign waters, though they have not in the courts of this country the force of law, may, as evidence of negligence, be of importance in determining the liability for a collision in such waters. The effect of special regulations made by the Government of this or a foreign country for its ships of war and for ships under convoy is expressly saved by the regulations (*x*).

Application of foreign local regulations to British ships.

The defence of compulsory pilotage was available for a foreign as well as for a British ship. The statutory exemption of owners from liability for damage done by a ship when in charge of a compulsory pilot applied to foreign ships (*y*); and, independently of the statute, foreign as well as British owners were not liable for the acts of a person placed in charge of their ship by the state (*z*). For the effect of the Pilotage Act, 1913, sect. 15, see the next chapter.

Defence of "compulsory pilotage" available for foreign ships.

The employment of a pilot may, by statute, be made compulsory on a foreign ship visiting this country, even where she is beyond three miles from the shores of the United Kingdom (*a*).

(*t*) Order in Council, 10th Oct., 1910; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 424. Apart from native rigged craft there are a few foreign ships which are not governed by the Regulations for Preventing Collisions at Sea, see *infra*, p. 298, note (*f*). There are exceptions noted in the regulations in the application of Art. 9 (fishing vessels) to Dutch, Russian, Chinese and Siamese vessels; and of Art. 15 (sound signals in fog) to Turkish vessels and Dutch pilot vessels.

(*u*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 418 (2), 421 (2). See *The Fyenoord* (1857), Swab. 374; *The Seine* (1859), *ibid.* 411, as to the law on this subject under the M. S. Act, 1854.

(*x*) Art. 13, *infra*, p. 346.

(*y*) As did the former Pilotage Act, 6 Geo. 4, c. 125, s. 55. See *The Christiana* (1830), 2 Hag. 183.

(*z*) 17 & 18 Vict. c. 104, s. 388; *The Maria* (1839), 1 W. Rob. 95, 106. In *The Girolamo* (1833), 3 Hag. Ad. 169, and other cases under 6 Geo. 4, c. 125, it was held that the statutory exemption of owners from liability for the fault of a compulsory pilot did not apply so as to exempt the owners of a foreign ship in proceedings *in rem*. In *The Vernon* (1842), 1 W. Rob. 316, Dr. Lushington appears to have considered that the statutory exemption of owners was *lex fort.*

(*a*) *The Annapolis* and *The Johanna Stoll* (1860), Lush. 295. But see 41 & 42 Vict. c. 73.

Compulsory
pilotage
abroad.

The owners of a British ship, which had been in collision with a foreign ship in the Scheldt, were sued by the foreign ship in this country. The British ship alleged that the collision was caused entirely by the negligence of the pilot, whom, by the Belgian law in force in the Scheldt, she was compelled to take. By the Belgian law owners are liable for the acts of a compulsory pilot. It was held by the Privy Council (reversing the decision of Court below) that the Belgian law, which imposed a liability upon owners to which they were not subject, either by the law of this country or by any principle of justice, could not be enforced, and that the British owners were not liable (*b*). But since the Pilotage Act, 1913, sect. 15, came into operation a similar case would, it is submitted, be maintainable.

Statutory
limitation of
liability
applies to
foreign ships.

In a former chapter it has been stated that the common law right of a sufferer by collision to obtain from the wrongdoer a full recompense has, from time to time, been considerably modified by British statutes. Until the passing of the Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), which preceded the present Act, there was frequently great difficulty, in cases where one or both the ships in collision were foreign, in determining whether the municipal law limiting owners' liability was, or was not, applicable (*c*). At the present day no such difficulty can arise. Whether the ships are both British, or both foreign, or one British and one

(*b*) *The Halley* (1867), L. R. 2 P. C. 193; in the Court below, *ibid.* 2 A. & E. 3. The principle that an act wrongful in the place it was committed must also be wrongful by the law of this country to be actionable here was in this case first expressed in any reported decision. In this case it seems to have been wrongly assumed that the pilot was in charge of the ship; this is not always so abroad.

(*c*) The provisions of the Merchant Shipping Act, 1854, did not, in terms, apply to foreigners. Under this Act it was held that the liability of the owners of a British ship in collision with a foreigner, within three miles of the shores of the United Kingdom, was limited: *General Iron Screw Collier*

Co. v. Schurmanns (1860), 1 J. & H. 180; but see *The Saxonia*, Lush. 410, where this case was questioned; that the liability of the owners of two foreign ships in collision on the high seas, beyond that distance from the United Kingdom, was unlimited: *Cope v. Doherty* (1857), 4 K. & J. 367; on app. 2 De G. & J. 614; and that the liability of the owners of a foreign ship in collision with a British ship, beyond the three-mile limit, was unlimited: *The Wild Ranger* (1860), Lush. 553; even although the foreign ship's liability by the municipal law of her own state were the same as that of the British ship by British law: *The Wild Ranger*, *ubi supra*.

foreign, and whether the collision occurs in British waters or on the high seas, the limit of owners' liability is the same, namely, that fixed by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 503.

In *The Amalia* (d) it was held that the liability of the owners of a British ship in collision with a foreign ship on the high seas (in the Mediterranean) was limited by the Act of 1862. It was contended that the Legislature had no power to alter the rights of foreigners in the case of a collision on the high seas, or to limit the amount of the damages to which by the maritime law they were entitled. It was, however, held by the Privy Council (affirming the decision of Dr. Lushington) that there is no breach of international law in such legislation; and it was said by Lord Chelmsford, in the course of the judgment, and the decision in the case went upon the principle, that the owners of a foreign ship in a similar case would be entitled to the benefit of the Act, by which in all cases the liability of the owners of a foreign ship is limited in the same way, and to the same extent, as that of owners of a British ship (e).

The Admiralty rule as to division of loss where both ships are in fault for a collision appears to have been applied as part of the law maritime to all collisions, whether in British or foreign waters or on the high seas, and whether the ships were both British, or both foreign, or one British and one foreign. And the Judicature Act, 36 & 37 Vict. c. 66, which extended its operation to the Courts other than those having Admiralty jurisdiction, appears to have had an equally wide operation (f).

The rule was applied in a case of collision between two ships belonging to the same owners, as between a foreign cargo-owner suing the British owners of a ship sailing under

(d) (1864), Br. & Lush. 151; 1 Moo. P. C. N. S. 471.

(e) It seems that the law limiting owners' liability is not *lex fori*. Such was the opinion of Wood, V.-C., in *Cope v. Doherty* (1857), 4 K. & J. 367, 384; and in *The General Iron Screw Collier Co. v. Schurmanns* (1859), 1 J. & H. 180, 197. In *The Amalia* the Privy

Council expressed no opinion upon the point, but Dr. Lushington (Lush. p. 153) was of the same opinion as Wood, V.-C., in the cases above mentioned. Cf. also *per* Lord Stowell in *The Carl Johan* (1819), mentioned in *The Girolamo* (1833), 3 Hag. Ad. 169, 186.

(f) See *supra*, p. 142.

Rule as to division of loss applies to foreign ships.

Maritime
Conventions
Act, 1911.

a foreign flag for loss of cargo in a collision caused by the fault both of the carrying ship and of the other ship (*g*).

Losses where more than one ship is to blame for a collision are now divided in accordance with the provisions of the Maritime Conventions Act, 1911. This Act extends throughout His Majesty's Dominions and any territories under his protection, including Cyprus, except Australia, Canada, Newfoundland, New Zealand, and South Africa, and all of them except South Africa have passed legislation to the same effect (*h*). The Act by sect. 10 is to be construed as one with the Merchant Shipping Acts, 1894 to 1907, and the provisions relating to collisions in Part 5 of the Merchant Shipping Act, 1894, are to be observed by all foreign ships within British jurisdiction (*i*). But apart from legislative enactment it is submitted that the provisions of the Act will be applied as part of the *lex fori* to all foreign ships. It would seem impossible that the fact that the Act did not give effect to the Conventions (*k*) could be used as a defence to a claim by or against a foreigner whose nation was a party to the convention, though the legislation of the foreigner's nation gave full effect to the Conventions, but *quære* if the collision took place within the foreigner's territorial waters.

Arrest of ship
of a foreign
sovereign.

It is a principle of international law that a sovereign prince or state cannot be sued in a foreign court, and, on the same principle, proceedings *in rem* cannot be taken against the public ship of a foreign sovereign (*l*). But it has been said (*obiter*) by Sir R. Phillimore that if a ship of a foreign sovereign engages in trade she is liable to arrest, and the sovereign must be taken to have waived the privilege of immunity from arrest which attaches to a public ship of a

(*g*) *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521.

(*h*) Commonwealth of Australia: The Navigation Act, 1912 (No. 4 of 1913), ss. 259 to 264. Dominion of Canada: Maritime Conventions Act, 1914 (4 & 5 Geo. 5, c. 13). Newfoundland: Marine Disasters Act, 1913 (3 Geo. 5, c. 30). Dominion of New Zealand: Act No. 53 of 1912.

(*i*) Sect. 418.

(*k*) *E.g.*, in a claim by an innocent party against joint tortfeasors: see *supra*, p. 201.

(*l*) *The Constitution* (1879), 4 P. D. 39; *The Parlement Belge* (1880), 5 P. D. 197; *The Jassy*, (1906) P. 270, in which case it was held that an undertaking to put in bail given under a misapprehension was not a waiver of the privilege.

foreign state (*m*). It has also been held that it is not in the power of the Crown, without the consent of Parliament, to exempt from liability to arrest the trading ship of a foreign sovereign (*n*).

A frigate of the United States was stranded on the south coast of England and received salvage services from an English tug. She had on board, under an Act of Congress and for public purposes, cargo owned by American citizens. The tug-owner sought to arrest the frigate and her cargo in a claim for salvage. It was held that no warrant for arrest could issue either in respect of ship or cargo (*o*).

The Parlement Belge, a vessel belonging to the King of the Belgians, commanded and manned by officers and men commissioned and paid by him, was engaged in carrying mails in connection with the British Post Office, together with passengers and cargo. On her voyage from Ostend to Dover, when close to Dover pier, she ran into a British ship at anchor. Notwithstanding the fact that a convention had been entered into between her Majesty and the King of the Belgians declaring that the mail boats, of which *The Parlement Belge* was one, should be deemed to be ships of war and should not be liable to arrest, it was held by Sir R. Phillimore that she was liable in proceedings *in rem* at the suit of the owner of the injured vessel. This decision was reversed by the Court of Appeal upon the following grounds: (1) That the person and the property of a foreign sovereign are exempt from the jurisdiction of a British Court upon the same grounds, namely, that the exercise of such jurisdiction is incompatible with the absolute independence of the sovereign of every superior authority; (2) That this principle applies to an Admiralty action *in rem*; (3) That a ship owned and used by a State or sovereign for public purposes is exempt from arrest, whether process *in rem* is considered as a proceeding against the ship or against the shipowner; (4) That in an action *in rem* the shipowner is indirectly impleaded.

(*m*) *The Charkeh* (1873), L. R. 4 A. & E. 59, *supra*; see the observations of the Court of Appeal upon this case, 5 P. D. 217.

(*n*) *The Parlement Belge* (1880), 4 P. D. 129. In the Court of

Appeal (5 P. D. 197) this question was not considered. See also *infra*, p. 281.

(*o*) *The Constitution* (1879), 4 P. D. 39.

The question whether the ship was exempt from arrest by virtue of the convention mentioned above was not considered.

Mail Ships
Act.

By the Mail Ships Act (*p*) provision has been made to exempt ships carrying mails to or from British colonies and foreign countries from liability to arrest, upon security being given for the payment of damages as mentioned in the Act.

Foreign
sovereign
suing in
British Court
must give
bail to answer
counter-
claim.

Where one of the ships in collision is a public ship of a foreign government, and the foreign government sues the other ship in an Admiralty Court of this country, proceedings in the action will be stayed, upon the application of the owners of the defendant ship, until the foreign plaintiffs give bail to answer a counter-claim made by the defendant owners (*q*).

Foreign governments occasionally submit that the question of liability for a collision in which their man-of-war, or other public ship, is involved, shall be determined by the Courts of this country. In such a case the regulations are material upon the question of negligence (*r*), though probably not expressly binding upon such ships (*s*).

Application of
Lord Camp-
bell's Act to
foreigners and
foreign ships.

The representatives of foreigners killed in a collision on the high seas on board a foreign ship can recover damages under Lord Campbell's Act in the Courts of this country (*t*); and under the same Act a foreign ship has been made liable, in proceedings *in rem*, for loss of life on the high seas caused by her negligent navigation (*u*). But as regards actions

(*p*) 54 & 55 Vict. c. 31. The Act has been applied to ships engaged in the mail service with France by Orders in Council of 6th Feb. 1892, 5th Aug. 1892, and 18th May, 1892; with India, Order in Council of 16th May, 1893; with South Australia and Western Australia, Order in Council of 5th Aug. 1892.

(*q*) *The Neubattle* (1885), 10 P. D. 33.

(*r*) See *The Lord Byron* (1879), cited Maude & Pollock on Ship, 4th ed. 607, note (*k*).

(*s*) See Art. 13, *infra*, p. 346.

(*t*) *The Explorer* (1870), L. R. 3 A. & E. 289; followed in *Davidson v. Hill*, (1901) 2 K. B. 606. In *Adam v. British and Foreign Steamship Co.*, (1898) 2 Q. B. 430, Darling, J., had held the contrary. In *The Vera Cruz* (1884), 10 App. Cas. 59, the

persons killed appear to have been foreigners. In *Kendrick v. Burnett* (1897), 25 Ct. of Sess. Cas. 4th ser. 82, the liability for personal injury or death by collision on the high sea was held to be limited to cases where it is created by the laws of the countries of the wrongdoer and of the sufferer. In America no action lies in Admiralty for the death of a person on the high sea: *Rundell v. Compagnie Générale Transatlantique*, 100 Fed. Rep. 655; 94 Fed. Rep. 366; *La Bourgoynne*, 117 Fed. Rep. 261; *The Harrisburg*, 119 U. S. Rep. 199; *The Alaska*, 130 U. S. Rep. 201.

(*u*) *The Guldfaxe* (1869), L. R. 2 A. & E. 325. The collision in this case was between a Norwegian vessel and a British fishing lugger. The plaintiffs were the represen-

under Lord Campbell's Act, these could only be brought *in personam*, and the Admiralty Division had jurisdiction as a part of the High Court, and not from its original Admiralty jurisdiction (*x*), but now under the Maritime Conventions Act, 1911, a right is given to bring actions *in rem* in any Court having Admiralty jurisdiction in respect of all claims for loss of life or personal injuries caused by collision (*y*).

If an action *in rem* is pending in a foreign Court in respect of the same collision, the Court has a discretion (*z*) to stay its proceedings or to put the plaintiff to his election whether he will abandon one or other of the actions (*a*); but there will be no stay, where, bail having been given abroad, there has been no arrest of the ship and no legal proceedings abroad (*b*). Where an action by the owners of ship A. against ship B. was pending in a Vice-Admiralty Court abroad, proceedings by the owners of ship B. against ship A. in the English Admiralty were stayed (*c*).

Lis alibi pendens in a foreign Court.

In a case of wilful damage by the master of a foreign ship to another foreign ship in foreign waters, the Admiralty Court refused to entertain the action (*d*).

The judgment of a competent foreign Court (and for this purpose Irish, Scotch and Colonial Courts are foreign Courts) delivered before action brought in this country (*e*) upon the merits (*f*) of a collision, given in the presence of both parties, is, if final and conclusive (*g*), a bar to an action in this

Res judicata : effect of foreign judgment.

tatives of four of the crew of the lugger, who were British subjects. See note, *The Explorer* (1870), L. R. 3 A. & E. 289, 290.

(*x*) *The Vera Cruz* (No. 2) (1884), 9 P. D. 96; affirmed (1885), 10 App. Cas. 59; *The Circe*, (1906) P. 1.

(*y*) Sect. 6.

(*z*) As to the validity of the plea of *lis alibi pendens* in a foreign Court, as a defence, see *per* Pollock, C. B., in *Scott v. Seymour* (1862), 1 H. & C. 219, 229.

(*a*) See *Mutrie v. Binney* (1887), 35 Ch. D. 614, followed in *The Christiansborg* (1885), 10 P. D. 141; *The Mali Ivo* (1869), L. R. 2 A. & E. 356; *The Catterina Chiazzare* (1876), 1 P. D. 368. See *The Delta* (1876), 1 P. D. 393, 404; *The Lanarkshire* (1855), 2 Sp. 189; *Hyman v. Helm* (1883),

24 Ch. D. 531; *McHenry v. Lewis* (1883), 22 Ch. D. 397; *The Reinbeck* (1889), 6 Asp. M. C. 366, as to the circumstances under which an action in England will be restrained.

(*b*) *The Mannheim*, (1897) P. 13.

(*c*) *The Peshawpur* (1883), 8 P. D. 32.

(*d*) *The Ida* (1860), Lush. 6. This case was decided before 24 Vict. c. 10, came into force.

(*e*) *The Delta* (1876), 1 P. D. 393. See *Houstoun v. Marquis of Sligo* (1885), 29 Ch. D. 448.

(*f*) *The Delta*, *ubi supra*; *Harris v. Quine* (1879), L. R. 4 Q. B. 653.

(*g*) *Henderson v. Henderson* (1843), 3 Ha. 100; *Plummer v. Woodburn* (1825), 4 B. & C. 625, 637; *Frayes v. Worms* (1865), 10

country between the same parties (*h*) for the same collision (*i*). The Courts of this country will not entertain an action in such a case, although fresh evidence may have been discovered, and although all the facts were not before the foreign tribunal (*k*); nor because the foreign Court was misinformed as to English law (*l*). If the parties are not the same, as where the shipowners sue in one country and the cargo-owners in the other (*m*); or if the foreign tribunal had not jurisdiction (*n*); or if the plaintiffs in this country were not subjects of, nor resident, nor present in the foreign country, and did not as plaintiffs abroad select the foreign tribunal (*o*); or if the foreign judgment went by default (*p*); or was against natural justice, as where the foreign judges were interested parties (*q*); or where the defendant had never been summoned (*r*); or was in defiance of the comity of nations, as where the foreign Court refuses to recognize title acquired by the law of England (*s*); or if the foreign judgment was obtained by fraud (*t*),—it is not a bar to an action in this country, and in an action here the foreign judgment in such cases is not admissible in evidence (*u*). A judgment *in personam* is, it seems, a bar to an action by the same plaintiff *in rem* (*x*).

A foreign judgment may be pleaded in bar, so long as it

C. B. N. S. 149; *Nouvion v. Freeman* (1889), 15 App. Cas. 1; decision on collateral points not binding: *Concha v. Concha* (1886), 11 App. Cas. 541.

(*h*) As to what is a judgment between the same parties, *Arnison v. Smith* (1889), 40 Ch. D. 567.

(*i*) See Phillimore's *Internat. Law*, 2nd ed. IV. 733 *seq.*; Westlake's *Priv. Internat. Law*, 376; Foote's *Priv. Internat. Law*, 476; Roscoe, *Nisi Prius*, 15th ed. 196.

(*k*) *Re Trufort, Trafford v. Blanc* (1887), 36 Ch. D. 600.

(*l*) *Godard v. Gray* (1871), L. R. 6 Q. B. 139.

(*m*) Cf. *The Pennsylvania*, 19 Wall. 125; *The Pennsylvania*, 3 Mar. Law Cas. O. S. 477. As to the effect of a foreign judgment *in rem*, see *Castrique v. Imrie* (1870), L. R. 4 H. L. 414.

(*n*) *The Griefswald* (1859), Swab. 430; *Havelock v. Rockwood* (1799), 8 T. R. 268.

(*o*) *General Steam Navigation Co. v. Gillou* (1843), 11 M. & W. 877, 894. See also *The Griefswald*, *ubi supra*.

(*p*) *The Delta, The Ermia Fozolo* (1876), 1 P. D. 393.

(*q*) *Price v. Dewhurst* (1836), 8 Sim. 279.

(*r*) *Ferguson v. Mahon* (1840), 11 Ad. & El. 179; *Buchanan v. Rucker* (1807), 9 East, 192; S. C., 1 Campb. 63; *Cavan v. Stewart* (1816), 1 Stark. 525.

(*s*) *Simpson v. Fogo* (1859), 1 J. & H. 18; 1 H. & M. 195.

(*t*) Foote's *Private International Law*, 476; *Godard v. Gray* (1871), L. R. 6 Q. B. 139; *Abouloff v. Oppenheimer* (1882), 10 Q. B. D. 295; *Vadala v. Lawes* (1890), 25 Q. B. D. 310.

(*u*) *Castrique v. Imrie* (1870), L. R. 4 H. L. 414, 427.

(*x*) *The Griefswald* (1859), Swab. 430.

remains unreversed, and notwithstanding that an appeal is pending (*y*).

The City of Mecca, a British steamship, was in collision on the high seas with a Portuguese ship. *The City of Mecca* was arrested in Portugal and found by the Portuguese Court to be in fault for the collision. Owing to some irregularity in the proceedings she was released from arrest by the Portuguese authorities, and came to England, the foreign judgment remaining unsatisfied. She was arrested in England by the plaintiffs in the Portuguese action; and it was held by Sir R. Phillimore that international comity required that the English Admiralty Court should enforce the decree of the Portuguese Court (*z*). In the Court of Appeal it appeared, for the first time, that the Portuguese action was *in personam* and not *in rem*; and it was held, in consequence, that the foreign judgment not having created a maritime lien, the vessel had been wrongly arrested in the Admiralty action in this country (*a*).

Foreign judgment *in rem*: whether it can be enforced by arrest of ship here.

The criminal liability in the Courts of this country of a foreigner, in respect of a collision whereby a British subject or a foreigner is killed or injured, is referred to in another chapter (*b*).

Criminal liability of foreigner.

(*y*) *Castrique v. Behrens* (1863), 30 L. J. Q. B. 163; *Munro v. Pilkington* (1862), 31 L. J. Q. B. 163.

(*z*) 5 P. D. 28.

(*a*) 6 P. D. 106.

(*b*) p. 261.

CHAPTER X.

COMPULSORY PILOTAGE.

Owner liable where pilot voluntarily employed.

A PILOT whom the owner or master of a ship voluntarily employs to navigate the ship is the servant of the owner for that purpose, and the owner is answerable for a collision caused by his fault or negligence (*a*), and his ship is liable in Admiralty.

Formerly not so, where the pilot is placed in charge by the law.

In some waters and under certain circumstances the law requires a ship to be placed in charge of, and navigated by, a qualified or licensed pilot; and in such cases it is a statutory offence (*b*) on the part of the master of the ship not to take a pilot on board. A pilot taken under these circumstances, called a "compulsory" pilot, was held to be placed in charge of the ship by the law, and to supersede the master in the conduct of the ship so long as she was in pilotage waters. He was not the servant or agent of the owner; and for a collision caused entirely by his negligence neither was the owner answerable at law nor the ship in Admiralty. In such a case the remedy of the injured person was against the pilot alone (*c*).

Principle on which owners held exempt.

In *The Maria* (*d*), an owner was held not liable for damage caused by the negligence of a compulsory pilot, on the ground that a man is answerable for the acts of his servants within the scope of their employment, because he selects them and

(*a*) See *The Maria* (1839), 1 W. Rob. 95, 108; *The Eden* (1845), 2 W. Rob. 442. In early times the pilot appears to have been employed by or with the consent of the merchant, and it is not clear that the shipowner was liable for a collision caused by his fault. In 1643 a collision suit was defended on this ground. See Ad. Ct. Miscell. Books, 280, 13th June, 1643.

(*b*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 11.

(*c*) See *Stort v. Clements* (1792), Peake, 107, as to the liability of the pilot. See also *The Octavia Stella* (1887), 6 Asp. M. C. 182, where the damage was occasioned to an oyster bed.

(*d*) (1839), 1 W. Rob. 95, per Dr. Lushington. The owner was held exempt from liability in this case by the common law apart from the statute. See also *The Halley* (1867), L. R. 2 P. C. 193, 201; *The Annapolis* and *The Johanna Stoll* (1861), Lush. 295.

selects them voluntarily. But if a man is compelled to employ another, the principle upon which liability depends wholly fails, though it would seem that the doctrine of a master's responsibility for the acts of his servant was somewhat strained in its application to an owner and a licensed pilot. It is hard to understand why, because the State insisted, on the one hand, upon persons who exercise the office of pilots within certain districts being duly educated for the purpose, and insisted, on the other, that masters should within these districts take one of these persons on board their ships to superintend the steering, the usual relation between owner and servant was to be entirely at an end (e). There has, however, been no necessity in modern times to examine closely the application of common law doctrines to the case of compulsory pilotage, for from 1812 to the end of 1917, owners have by various statutes been relieved from liability for loss or damage occasioned by the fault of qualified pilots acting in charge of their ships within any district where the employment of such pilots was compulsory by law (f). This exemption is now abolished from January 1st, 1918, by the Pilotage Act, 1913, s. 15, and the liability of owners for loss or damage occasioned by pilots is now the same whether the employment of the pilot is voluntary or compulsory.

Statutory
exemption
since 1812
to 1917.

Exemption
abolished.

The Pilotage Act, 1913, s. 15, sub-s. (1); is as follows:—

Pilotage Act,
1913 (2 & 3
Geo. 5, c. 31),
s. 15.

(1.) Notwithstanding anything in any public or local Act, the owner or master of a vessel navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would if pilotage were not compulsory.

(e) *The Halley* (1867), L. R. 2 A. & E. 1, 16, per Sir R. Phillimore. See also per Lord Stowell, *The Neptune the Second* (1814), 1 Dods. 467.

(f) (1812), 52 Geo. 3, c. 39, s. 30: this Act would seem to have been confined to the Thames. (1825), 6 Geo. 4, c. 125, s. 55. This Act would seem to have extended the exemption to all cases where the master gave over charge of his ship to a licensed pilot in a

pilotage district: see per Martin, B., *General Steam Navigation Co. v. British and Colonial S. N. Co.* (1868), L. R. 3 Ex. 330, 342. Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 388: exemption limited to cases where employment compulsory. Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 633, is in same terms as sect. 388 of the Merchant Shipping Act, 1854.

Sub-sect. (2) directs that the section shall not take effect until January 1st, 1918, unless an earlier date is fixed by Order in Council (no earlier date has been fixed); and sub-sect. (3) directs that sect. 633 of the Merchant Shipping Act, 1894, shall cease to have effect when the section comes into force.

The wording of the section is curious, for a vessel does not navigate, but is navigated, and it was not the circumstance that pilotage was compulsory, but the fact that a pilot in charge by compulsion of law caused the damage that relieved the shipowner from liability. If "navigating" is to be referred to "master or owner," then the section does not in terms cover the case of a compulsory pilot navigating a vessel, with the result that, though the statutory exemption is removed by sub-section (3), owners will not be liable at law for the acts of pilots whom they are compelled to employ, unless the principles laid down in *The Maria* and other cases referred to above are held to be unsound. It is submitted, however, that the intention of the Legislature that the defence of "compulsory pilot" to claims for damage should be completely abolished, is so clearly indicated by the reference to an International Convention (*g*) in sub-sect. (2), and by the repeal of sect. 633 in sub-sect. (3), that this construction must be rejected, and "navigating" read as if "to navigate" were an intransitive verb, and meaning "sailing" or "proceeding." Read thus the section would seem to give effect to the Convention, and the liability of an owner will be the same in the event of any loss or damage being caused by the fault of a pilot, whether he were engaged voluntarily or by compulsion of law. The words "notwithstanding anything in any public or local Act" do not limit the effect of the succeeding operative words, but mean no more than that nothing in any Act shall be an impediment to the measure (*h*).

Duties of
pilot and
master.

The Legislature has not defined the duties of a pilot or his relation to the master of the vessel on which he is taken. In the Pilotage Act, 1913, it seems to be contemplated that

(*g*) Art. 5 of the Collisions Convention, 1910, *infra*, p. 551.

(*h*) Stroud, Judicial Dictionary, quoting Dwarries.

the pilot should "take charge of the ship" (*i*), but there is no express direction to that effect. While exemption from liability for the fault of compulsory pilots was in force, it was held that the whole conduct of the navigation of the ship belonged to the pilot, and that his orders had in all ordinary circumstances to be obeyed (*k*). But now that the owner is liable whether the damage is caused by the fault of the pilot or of the owners' servants, there would seem to be no obligation to give over charge of the ship to the pilot, and no reason why pilots should not be treated in this country as they are in most foreign countries, merely as expert advisers to the master. More responsibility will be thrown on masters, whatever be the view as to the position and duties of pilots, for they will be unable to get rid of responsibility in pilotage waters by leaving the navigation in charge of the pilot. The Act does not abolish compulsory pilotage, though it takes away, from January 1st, 1918, the protection given to owners from claims for damage caused by compulsory pilots, and a master failing to take a pilot in a district where pilotage is compulsory is liable to a penalty (*l*); he must also give facilities for boarding his ship (*m*), and must declare his ship's draught, length and beam, if requested (*n*). The Act extends to the United Kingdom and the Isle of Man, and applies to all ships, British and foreign (*o*).

In cases in which the question at issue was the ship-owner's liability for collision where pilotage was compulsory, the law assigned certain duties to the master and others to the pilot; and it was held that, if the master interfered with the pilot in his own province, he did so at the risk of making his owner liable in case of collision (*p*). It is frequently the duty of a master to take a pilot in waters where there is no compulsion of law to do so, and questions have arisen as to the scope of the master's authority and duty when a pilot is on board under such circumstances, and as

Further observations on position, duty, and responsibility of master when pilot is on board.

(*i*) See sect. 11, sub-sect. (2); sect. 44, sub-sects. (1), (3).

(*k*) *The Christiania* (1850), 7 Moo. P. C. 160, 171; *The Duke of Cambridge* (1874), L. R. 5 P. C. 451, 457. See *The Guy Mannering* (1882), 7 P. D. 132, 134.

(*l*) Pilotage Act, 1913, s. 11 (2).

(*m*) *Ibid.* s. 44.

(*n*) *Ibid.* s. 31.

(*o*) *Ibid.* s. 61.

(*p*) These cases were referred to in detail in previous editions of this work, but it is considered that no useful purpose would be served by incorporating them in this edition.

to his liability, not only in respect of damages for collision, but for other matters connected with the navigation of the ship. There is reason to think that outside the law courts nautical opinion is by no means unanimous in assigning to the master the subordinate position in which he is placed by the Admiralty decisions referred to above.

In H. M.'s
Navy.

It is possible that the doctrine of the Admiralty Court with reference to the supreme authority of the pilot may have originated in antiquated regulations for the Royal Navy, which provide that the pilot is to "have the sole charge and command of the ship"; that he is to give the orders for navigating the ship, and that the captain is to see them carried out (*q*). This view of the pilot's position and duties probably dates from the days when the navigating and fighting branches of the service were entirely distinct. Later regulations (of 1808 to 1899) are very different. Art. 1007 of the regulations of 1899 provides that the captain and navigating officer are to "attend particularly to his (the pilot's) conduct," and that if he is "not qualified to conduct the ship" or runs her into danger, he is to be "removed from charge"; "and if the ship should be at any time damaged through the ignorance or negligence of the pilot, when a common degree of attention on the part of the captain and navigating officer would have prevented the disaster, those officers will be deemed to have neglected their duty." Under this article it is held by the Lords of the Admiralty that, if a ship gets ashore on a well-known sand in consequence of an obviously wrong course given by the pilot, the captain is responsible. Thus, in the case of *The Vigilant*, which got ashore on the Gunfleet Sand on the 22nd of October, 1862, with a pilot on board, the captain and the master were severely censured by the Lords of the Admiralty (*r*).

Opinion of
Elder
Brethren of
the Trinity
House.

The opinion of the Elder Brethren of the Trinity House upon the respective duties of master and pilot is as follows:—
"That in well-conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot

(*q*) MSS. Regulations for 1790, in the Admiralty Library at Whitehall.

(*r*) See Report, &c. of the Unseaworthy Ships Commission, 1874, vol. 2, p. 528.

waters as freeing him from every obligation to attend to the safety of the vessel; but that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken." And they add, that this is the view generally taken by shipowners (s).

The opinion of the Board of Trade as to the responsibility of the master is that "he is bound to exercise a vigilant supervision, and that, though the advice of the pilot is of the greatest value, the master is not bound to follow it implicitly, if it appears in his deliberate judgment to involve danger to the ship." In accordance with this opinion, the Board of Trade holds that it rests with the master to decide whether in bad weather he will get under way for sea, and to say whether, under threatening circumstances, he will proceed or turn back (t).

Opinion of
the Board
of Trade.

In the Suez Canal and elsewhere abroad there is a fixed and compulsory charge for pilotage, but the pilot does not supersede the master in the command and conduct of the ship. He is on board only as the adviser of the master; the responsibility as regards the navigation of the ship remains with the master (u). It is believed that the position of the pilot and the liability of the shipowner is the same in Canada (x), France, Holland, Belgium, on the Danube (y), and in Spain (z); but in Portugal (a) the law was similar to that of England. In America it seems that the ship is liable *in rem*, but that the shipowner is not liable *in personam*

Foreign law
as to position
and duty of
pilot.

(s) See note (r), *supra*.

(t) See a letter from T. Gray, Esq., to the Mercantile Marine Association, 4th Oct. 1873, Unseaworthy Ships Commission, 1874, vol. 2, p. 527.

(u) *The Guy Mannering* (1882), 7 P. D. 52, 132.

(x) 36 Vict. c. 54 (Canada.) Cf. *The Quebec* and *The Charles Chaloner*, 19 Lower Canada Jurist, 201.

(y) *The Augusta* (1886), 6 Asp. M. C. 58, 161; *The Prins Hendrik*,

(1899) P. 177; *The Dallington*, (1903) P. 77; *The Agnes Otto* (1887), 12 P. D. 56.

(z) The Spanish Commercial Code, Art. 834, expressly provides that the presence on board of a pilot shall not exempt the shipowner from liability.

(a) See Com. Code (Portugal), Art. 492 (3). Portugal is a party to Maritime Convention, 1909; it is believed the law has been altered.

where he is compelled to employ the first pilot who offers (*b*). The German Commercial Code, Art. 738, appears to exempt owners from liability for the negligence of a pilot whom the ship is bound to employ (*c*).

Liability
of pilot.

A pilot is liable for damage caused by his default (*d*), but where a pilot has given a bond his liability is limited to the amount of the bond, together with the amount payable to him for pilotage in respect of the voyage in which he was engaged when his liability arose (*e*).

The pilotage
authority is
not liable.

Attempts have in some cases been made to recover from the pilotage authority damages for a collision caused by the fault of a licensed pilot, but with little success (*f*). In one (Scotch) case, however, where the circumstances were peculiar, a harbour authority was held liable for the negligence of a person acting as pilot, on the ground that he was their servant. The harbour authority, having power to license pilots under the Merchant Shipping Act, 1854 (ss. 330—388), was held liable for injury to a steamer entering the harbour, caused by the fault of a boatman, not licensed as a pilot, who was acting in charge of the steamer as pilot, and was employed by the defendants, the harbour authority (*g*). The grant or renewal of a licence to a pilot does not impose any liability on the authority for any loss occasioned by any act or default of the pilot (*h*).

Dock or har-
bour master
in charge.

In many ports the harbour or dock-master has power, by Act of Parliament, to regulate the movements, mooring, and berthing of ships. When a vessel is acting under the orders of such a person her owners are, as regards liability for damage done by her, in the same position as they were when she was in charge of a compulsory pilot before January 1st, 1918; the dock-master is not their servant, and they are not liable for damage caused by his negligence (*i*). Thus

(*b*) *Smith v. Condry*, 1 How. 28; *The China*, 7 Wall. 53; *Smith v. The Creole*, 2 Wall. jun. 485; *Homer Ramsdell Co. v. Compagnie Générale Transatlantique*, 182 U. S. Rep. 406; *Ex parte McNeal*, 13 Wall. 236; *Bussy v. Donaldson*, 4 Dallas, 194; *Flanigan v. Washington Insurance Co.*, 7 Barr. 306.

(*c*) It is believed that the exemption does not extend to the acts of a pilot for whom the ship is bound to pay, but need not take,

as, *e.g.*, in the *Elbe*.

(*d*) See *supra*, p. 76, and *infra*, p. 277.

(*e*) Pilotage Act, 1913, s. 35.

(*f*) See *supra*, p. 108.

(*g*) *Holman v. Irvine Harbour Trustees* (1877), 4 Sess. Cas. 4th ser. 406.

(*h*) Pilotage Act, 1913, s. 19.

(*i*) *The Mystery*, (1902) P. 115. Cf. *The New York Packet*, 4 Low. Canada Rep. 343.

it was held that a ship which was damaged by another falling over against her at low water was not entitled to recover damages against the other, the latter having been berthed under the directions of the dock-master (*k*).

But in a place where vessels are required to take up their berths under the orders of a harbour master, if, without any directions from him, a ship takes up a berth at which she is afterwards injured by another properly berthed, she cannot recover against the latter (*l*).

If ordered to do so by the dock authorities, a ship must send down her yards; and she must shift her berth, even after she has been properly moored by their order, and though she is safer where she is (*m*).

If, in carrying out the orders of the dock-master, ordinary prudence would suggest that a particular precaution should be taken, a vessel neglecting to take that precaution will be held to be in fault. Thus when a ship was being moved under the orders of a dock-master, and negligently omitted to use a check rope, her owners were held liable for damage she did to other craft in consequence (*n*).

So, if a vessel ordered to shift from a berth to make room for another, moors so close that the swell of passing traffic causes her to range up against the other, she will be held liable (*o*). But where the dock-master gives a specific order, it seems that it must be obeyed, though those on board the ship may doubt its prudence (*p*); but if it is certain that disaster will follow from obedience, they are justified in disobeying it (*q*). A dock-master has authority to give directions to a ship coming into dock (*r*), and to order a ship to leave (*s*).

A ship going out of dock under the orders of a dock-master was offered, and accepted, the services of the dock

(*k*) *The Economy* (1855), 1 Pritch. Ad. Dig. 3rd ed. 286. And see *The Bilbao* (1860), Lush. 149.

(*l*) *The Jacob* (1860), 1 Pritch. Ad. Dig. 3rd ed. 286.

(*m*) *The Excelsior* (1867), L. R. 2 A. & E. 268.

(*n*) *The Cynthia* (1877), 2 P. D. 52. See also *The Excelsior* (1867), L. R. 2 A. & E. 268.

(*o*) *The Greenpoint*, 18 Fed.

Rep. 186.

(*p*) See *Reney v. Magistrates of Kirkcudbright*, (1892) App. Cas. 264.

(*q*) *Taylor v. Burger* (1898), 8 Asp. M. C. 364.

(*r*) *Reney v. Kirkcudbright Magistrates*, (1892) App. Cas. 264.

(*s*) *The Sunlight*, (1904) P. 100,

112.

company's tug. Through want of power in the tug, a collision occurred. The owners were held liable, there being no obligation upon them to accept the services of the tug, or on the company to supply one (*t*).

Liability of
dock or
harbour
authority.

The dock or harbour authority is liable for injury done to a ship whilst under way and under the orders of the dock or harbour master (*u*); and the liability would be the same where damage is done by the ship (*x*). Such authorities are liable for damage done to ships by the negligence of their officials or owing to failure to carry out their obligations (*y*).

Since the Pilotage Act, 1913, s. 15, came into force, the majority of the cases dealing with compulsory pilotage, and the liability of owners for acts of their servants while the ship was in charge of a compulsory pilot, and the statutes imposing compulsory pilotage in various districts, have ceased to be material in cases of collision occurring after January 1st, 1918. They have accordingly been omitted from the present edition of this work.

(*t*) *The Belgic* (1875), 2 P. D. 57, note.

(*u*) *The Zeta*, (1893) App. Cas. 468; *The Rhosina* (1885), 10 P. D. 24.

(*x*) See, on this question, *Mersey Dock Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; *Metcalfe v. Hetherington* (1860), 11 Ex. 257; 5 H. & N. 719; *Holman v. Irvine*

Harbour Trustees (1877), 4 Ct. of Sess. Cas. 4th ser. 406; *Shaw, Savill and Albion Co. v. Timaru Harbour Board* (1889), 15 App. Cas. 429; *The Apollo*, (1891) App. Cas. 499, *supra*, p. 107; *The Burlington* (1895), 8 Asp. M. C. 33; *The Ratata*, (1898) App. Cas. 513.
(*y*) Cf. *The Bearne*, (1906) P. 48.

CHAPTER XI.

COLLISION WITH REFERENCE TO—(1) THE SHIPOWNER'S LIABILITY AS CARRIER—(2) THE CONTRACT OF INSURANCE.
—CRIMINAL AND OTHER CONSEQUENCES OF COLLISION.

THE liability of the shipowner for loss by collision of goods on board his ship will usually depend on the terms of the contract of carriage. His liability apart from statutory limitations (a), and so far as it is not modified by express stipulations in the contract, depends on whether he is a common carrier (or subject to the same liabilities as a common carrier), or is a bailee for hire. The owner of a general ship, (i.e., one taking the goods of any shipper) is a common carrier (b). An owner of barges contracting to carry goods for a customer, and carrying only one customer's goods in a barge, but not hiring a specific vessel for the purpose, is not a common carrier, but is subject to the same liability in respect of the goods he carries as a common carrier (c). Whether the owner of a ship that is not a general ship, and carries goods for hire, is liable as a common carrier is doubtful (d). Again, whether the owner of a general ship is liable as a common carrier, except so far as he is protected by the contract, where he carries goods under a bill of lading, has been much disputed (e). It appears to be now decided that he is not (f).

Whether shipowner a common carrier.

At common law, where the shipowner is subject to the Shipowner's

(a) Merchant Shipping Act, 1894, ss. 448 (dangerous goods), 502 (fire, valuables).

(b) *Nugent v. Smith* (1876), 1 C. P. D. 423, C. A.

(c) *Liver Alkali Co. v. Johnson* (1874), L. R. 9 Ex. 338.

(d) See *Liver Alkali Co. v. Johnson*, *ubi supra*; *Nugent v. Smith* (1866), 1 C. P. D. 19; *ibid.* 423; *Chartered Mercantile Bank of India, London, and China v. Netherlands India Steam Navigation*

Co. (1883), 10 Q. B. D. 521, C.A.

(e) See 1 *Parsons on Shipping*, pp. 245 *seq.*, ed. 1869, where the writer states that he is not so liable.

(f) *Nugent v. Smith* (1876), 1 C. P. D. 19, 423; but see *per* Pollock, B., *Chartered Mercantile Bank of India, London, and China v. Netherlands India Steam Navigation Co.* (1882), 9 Q. B. D. 118; *Hayn v. Culliford* (1878), 4 C. P. D. 182.

liability at
common law.

liability of a common carrier, he is liable for the loss of and for all damage to goods while being carried by him, unless caused by the act of God or of the King's enemies or the inherent vice of the goods themselves (*g*), or the shipper's default (*h*), or by their having been properly made the subject of a general average sacrifice, as by their having been jettisoned in a case of necessity (*i*). For injury to passengers on board his ship he is liable only where it is caused by the negligence of himself or his agents, the officers or crew (*k*). To passengers, therefore, he is liable for injury in a collision caused by the fault of his own ship, or by the fault of both ships. To cargo-owners he is liable at common law for loss or damage in a collision by the fault of his own or of both ships, or where it is an inevitable accident. It is possible that a collision might occur by act of God, in which case he would not be liable. But the ordinary so-called case of collision by inevitable accident, as where it is caused by stress of weather, fog, or latent defect in gear, would not be held to be an act of God (*l*).

It has been held in America that owners of a tug towing craft with goods on board are not liable as common carriers for the safety of the goods (*m*).

Shipowner's
liability on
the contract
of carriage.

In practice the shipowner carrying goods usually contracts himself out of the onerous liability imposed on him by the common law. By the charter-party or bill of lading it is usually agreed that the goods shall be carried and delivered in good order, unless loss or damage shall arise from certain specified causes. In a modern contract of carriage these causes, technically called "exceptions," are usually very numerous, and commonly include "perils, dangers, and acci-

(*g*) *Nugent v. Smith* (1876), 1 C. P. D. 432; *Liver Alkali Co. v. Johnson* (1874), L. R. 9 Ex. 338; *Morrison v. Shaw*, (1916) 2 K. B. 783.

(*h*) *Royal Mail S.S. Co. v. Macintyre* (1911), 16 Com. Cas. 231; *Ohrloff v. Briscoe* (1866), L. R. 1 P. C. 231, contract cases, but a common carrier is not liable for the same reason.

(*i*) *Burton v. English* (1883), 12 Q. B. D. 218; *Mouse's Case* (1608), 12 Coke, Rep. 63; *Birkley v. Pres-*

grave (1801), 1 East, 220, 228.

(*k*) See *Redhead v. Midland Rail. Co.* (1877), L. R. 2 Q. B. 412; on app. *ibid.* 4 Q. B. 379, and the cases there cited.

(*l*) See *Nugent v. Smith* (1876), 1 C. P. D. 19, 34, as to what is an act of God.

(*m*) *Caton v. Rumney*, 13 Wend. 387. This seems to be the general rule, but there are contrary decisions. See 1 *Parsons on Shipping* (ed. 1869), 247, note.

dents of the seas, rivers, land, carriage, and steam navigation, of whatsoever nature and kind." Under a bill of lading so framed the shipowner is not liable for a collision which occurs without negligence in either ship (*n*), or for a collision caused wholly by the fault of the other ship (*o*); but he is liable where there is negligence in his own ship (*p*). Sometimes in the bill of lading there is contained an exception of "collision." In that case the shipowner is not liable for a collision caused by the fault of the other ship (*q*); but he remains liable for a collision caused by the fault of his own ship. The reason for his liability for a collision, caused wholly or in part by the fault of his own ship, is that "underlying the contract implied or involved in it (the bill of lading) is . . . an engagement on his part to use due care and skill in navigating the ship and carrying the goods" (*r*). But he ceases to be liable if he limits the general liability, as where the charter-party or bill of lading, or contract with a passenger (*s*), excepts a collision, even if caused by "any act, neglect, or default whatsoever, of the pilot, master, or mariners, or other servants of the shipowner in navigating the ship." These words cover loss in a collision caused by the fault of the carrying ship; but not loss by a collision with another ship of the same owners caused entirely by the fault of such ship (*t*).

Exception of
"collision"
in bill of
lading.

Exception of
negligence.

An exception of "dangers of accidents of navigation" in a bill of lading covers loss of cargo by collision caused by the fault of the other ship (*u*).

(*n*) *Buller v. Fisher* (1799), 3 Esp. 67; *Chartered Mercantile Bank of India, London, and China v. Netherlands India Steam Navigation Co., Limited* (1883), 10 Q. B. D. 521.

(*o*) *Wilson, Sons & Co. v. Owners of Cargo per Xantho, The Xantho* (1887), 12 App. Cas. 503, overruling *Woodley v. Michell* (1883), 11 Q. B. D. 47.

(*p*) *The Bernina* (No. 1) (1886), 12 P. D. 36.

(*q*) *Lloyd v. General Iron Screw Collier Co.* (1864), 3 H. & C. 284; *Grill v. General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600; on app. *ibid.* (1868), 3 C. P. 476; *Woodley v. Michell* (1883), 11 Q. B. D. 47; *Chartered Mercan-*

tile Bank, &c. v. Netherlands India Steam Navigation Co. (1883), 10 Q. B. D. 521, 531.

(*r*) *Per Lord Macnaghten, The Xantho* (1887), 12 App. Cas. 503, 515; and see *The Europa*, (1908) P. 84.

(*s*) *Haig v. Royal Mail S. Co.* (1885), 54 L. J. Q. B. 395, 640.

(*t*) *Chartered Mercantile Bank, &c. v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521. Except, perhaps, where there is negligence on the part of the owner in appointing an incompetent master or crew. See *per Brett, M. R.* (1883), 10 Q. B. D. 532.

(*u*) *Garston Sailing Ship Co. v.*

The Bernina was in collision partly by her own fault while carrying goods on a bill of lading which did not except negligence. These goods were in consequence of the collision transhipped on board another ship on a bill of lading which excepted negligence, and whilst being carried on to their destination were lost by the fault of those on board the carrying ship. It was held that they were transhipped for the purpose of earning freight under the original bill of lading, and that the owners of *The Bernina* were liable (v).

Collision
between ships
of the same
owner.

In the case of a collision between the carrying ship and another belonging to the same owners, the effect of the exception of negligence is to relieve the shipowner from his liability as owner of the carrying ship only, but does not alter his liability as owner of the other ship.

The case which decided these points was as follows:—A collision occurred between *The Crown Prince* and *The Atjeh*, a ship belonging to the owners of *The Crown Prince*, by the fault of both ships. The question arose whether the shipowners were liable to the owners of cargo shipped on board *The Crown Prince* under a bill of lading containing exceptions of, amongst other things, "collision," and "accidents, loss, or damage from any act, neglect, or default whatsoever of the pilots, master, or mariners, or other servants of the company in navigating the ship." It was held that the shipowners were not liable upon the contract of carriage. Baggallay and Lindley, L. JJ., were of opinion that the exception of "collision," although it did not cover the negligence of *The Crown Prince* (x), did cover that of *The Atjeh*; and further, that the negligence of *The Crown Prince* was covered by the exception of "accidents, &c." But the shipowners were held liable in tort (y) for the negligence of their servants on board *The Atjeh*, though, by reason of the rule as to division of loss, for only half the loss (z).

Hickie, Borman & Co. (1887), 18 Q. B. D. 17.

(v) *The Bernina* (No. 1) (1886), 12 P. D. 36.

(x) *Lloyd v. General Iron Screw Collier Co.* (1864), 3 H. & C. 284; *Grill v. General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600; *ibid.* 3 C. P. 476.

(y) As to the liability of the

shipowner in tort as well as upon the contract, see *Morgan v. Ravey* (1862), 6 H. & N. 265; *Pontifex v. Midland Rail. Co.* (1878), 3 Q. B. D. 23.

(z) *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521.

The rule as to division of loss where both ships were in fault did not affect the right of a cargo-owner to recover full damages for breach of the contract of carriage against the owner of the carrying ship, though the other ship was also in fault for the collision (*a*), and the shipowner's liability under his contract of carriage is unaffected by sect. 1 of the Maritime Conventions Act, 1911 (*b*).

Rule as to
division of
loss.

Damage to goods in a collision caused by the negligence of those on board is not covered by an exception of barratry in the bill of lading (*c*).

Exception of
"barratry."

In the absence of express stipulation to the contrary a shipowner impliedly undertakes that his ship shall perform the voyage undertaken without unnecessary deviation. A deviation necessary to save life is allowable (*d*), but not a deviation only to save the property of others (*e*). A deviation reasonable in the circumstances to avoid damage to ship or cargo is allowable (*f*). The effect of deviation is to deprive the shipowner of the benefit of the clauses in his contract of carriage by which his liability is limited. He will, however, have the benefit of the common law exceptions to the liability of a common carrier, if, and if only, he can show that the loss by one of these excepted causes was not, and could not have been occasioned by the deviation (*g*).

Effect of
deviation.

The right of a railway company to limit its liability by contract when carrying goods by sea depends on the Act under which it operates. Companies to which the Railway Clauses Act, 1863 (*h*) applies cannot rely on any exception unless the consignor has signed a special contract and the Court considers the exception to be reasonable (*i*). An exception of negligence of servants is *prima facie* unreasonable (*k*),

Limitations
on railway
companies.

(*a*) *The Bushire* (1885), 5 Asp. M. C. 416.

(*b*) Sect. 1, proviso (*c*).

(*c*) *Grill v. General Iron Screw Collier Co.* (1868), L. R. 3 C. P. 476.

(*d*) *Leduc v. Ward* (1888), 20 Q. B. D. 475; *Davis v. Garrett* (1880), 6 Bing. 716.

(*e*) *Scaramanga v. Stamp* (1880), 5 C. P. D. 295.

(*f*) *Phelps, James & Co. v. Hill*, (1891) 1 Q. B. 605; *The Teutonia* (1892), L. R. 4 P. C. 171, 179; *Nobel v. Jenkins*, (1896) 2 Q. B. 326.

(*g*) *Morrison v. Shaw Savill*, (1916) 2 K. B. 783, where the earlier cases are discussed.

(*h*) 26 & 27 Vict. c. 92.

(*i*) *Ibid.* sect. 31, applying sect. 7 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), to steam vessels and traffic carried thereby.

(*k*) *Doolan v. M. R. Co.* (1887), 12 App. Cas. 218, 229, 239; *Riggall v. G. C. R. Co.* (1909), 14 Com. Cas. 239. With regard to sea traffic the G. C. R. Co. may make an effective contract by bill

but if a company offers to carry at alternative rates—a higher rate with a liability for negligence and a lower without—and the customer accepts the latter, the contract will be held reasonable (*l*). Where a company contracts to carry partly by land and partly by sea it may limit its liability by certain excepted perils by a notice displayed in the booking office or printed in the freight note or receipt (*m*).

Shipowner's liability to charterer for loss by collision.

Whether the shipowners are liable to the charterer for loss sustained by the latter in consequence of a collision for which the chartered ship is in fault will depend upon the terms of the charter-party. Where such liability exists it will extend to expenses of salving the cargo, which have been paid by the charterers or their underwriters (*n*).

In a case (*o*) where the officers and crew were the servants of the owner, though by the terms of the charter-party the ship was "placed under the direction of" the charterer, it was held that the owners were liable to the charterer for loss sustained by the latter in consequence of the ship getting ashore by the negligence of her crew.

Liability of master as carrier.

The master, as well as the owner, is liable for the loss of goods taken on board by him as a common carrier (*p*). And it is said that he is liable for the negligence and misfeasance of his officers and crew (*q*). In America, it was held that the master was liable to a passenger on board his ship who was injured by a collision caused by the fault of the pilot, and not by the fault of the master (*r*).

of lading in any terms by reason of its private Act of 1912 (2 & 3 Geo. 5, c. lviii. s. 104), and is in the same position as the older companies whose Acts are before 1863, e.g., L. S. W. R. Co., see *The Stella*, (1900) P. 161. For the position of the G. E. R., see *Western Electric Co. v. G. E. R.*, (1914) 3 K. B. 554.

(*l*) *G. W. R. Co. v. McCarthy* (1887), 12 App. Cas. 218.

(*m*) Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 14. The perils which may be excepted include act of God, King's enemies, perils of the sea. With regard to the effect of a notice, see *Doolan v. M. R. Co.* (1887), 12 App. Cas. 792.

(*n*) *Scaramanga v. Marquand*

(1885), 5 Asp. M. C. 410, 506.

(*o*) *Omoa and Cleland Coal and Iron Co. v. Huntley* (1877), 2 C. P. D. 464. Amongst other cases, *Fletcher v. Braddick* (1806), 2 B. & P. (N. R.) 182, seems to have been relied on by the Court as establishing that the owners would be liable to third parties for the negligence of the crew. Cf. *The Tasmania* (1888), 13 P. D. 110.

(*p*) *Mors v. Slew* (or *Slue*) (1672), 3 Keb. 72, 112, 135 (best report); Raym. 220; 1 Mod. 85; 1 Ventr. 238; *Boucher v. Lawson* (1734), Cas. t. Hardw. 85, 194.

(*q*) Story on Agency, §§ 314—317; 3 Kent's Comm. 218; *Molloy*, l. 2, c. 2, s. 13.

(*r*) *Denison v. Seymour*, 9 Wend. 9.

There is jurisdiction in Admiralty in respect of a claim by the owner, consignee, or assignee of the bill of lading of goods carried into any port in England or Wales (*s*), for damage to the goods by the negligence or breach of contract by the owner, master, or crew of the carrying ship, provided no owner or part owner of the ship is at the time of the institution of the action resident in England or Wales (*t*). To enable him to sue, it seems to be necessary that the property in the goods should have passed to him (*u*). Though the statute gives a right to proceed against the ship in Admiralty, there is no maritime lien for damage in such a case (*x*).

Jurisdiction in Admiralty in case of damage to cargo.

The right of the shipowner to recover against the cargo-owner general average contribution for the expenses of raising his ship sunk in collision is considered elsewhere (*y*).

Ship sunk ; average.

The application of the Act limiting the liability of ship-owners upon the contract of carriage to an amount depending upon the tonnage of their ship is considered above in connection with the subject of limitation of liability (*z*).

Limitation of liability.

COLLISION WITH REFERENCE TO THE CONTRACT OF INSURANCE.

Loss by a collision whether it occurs without fault in either ship or by the fault of either or both ships is a loss by peril of the sea within the meaning of that term in an ordinary policy of insurance on ship (*b*). Where the loss is

Insurer's liability for collision.

(*s*) As to the meaning of this term, see *The Bahia* (1864), Br. & L. 61; *The Pieve Superiore* (1874), L. R. 5 P. C. 482; *The Dantzie* (1864), Br. & L. 102.

(*t*) 24 Vict. c. 10, s. 6; 36 & 37 Vict. c. 66, s. 16.

(*u*) See *The Freedom* (1871), L. R. 3 A. & E. 495, following *The St. Cloud* (1864), Br. & L. 4; *The Norway* (1865), Br. & L. 377. The contrary has been held by Sir R. Phillimore, though the facts did not render a decision upon the point necessary. See *The Figlia Maggiore* (1867), L. R. 2 A. & E. 106; *The Nepoter* (1869), *ibid.* 375.

It does not appear that these cases were cited in *The Freedom*.

(*x*) *The Pieve Superiore* (1874), L. R. 5 P. C. 482.

(*y*) *Infra*, p. 264.

(*z*) *Supra*, pp. 176 *seq.*

(*b*) In *Buller v. Fisher* (1800), 3 Esp. 67, it was held to be within the exception of "perils of the sea" in a charter-party: *Philips v. Baillie* (1780), 3 Dougl. 374; *Smith v. Scott* (1811), 4 Taunt. 126; and see *per* Lord Cairns, C., *Simpson v. Thompson* (1878), 3 App. Cas. 279, 286; *De Vaux v. Salvador* (1836), 4 Ad. & E. 420; *Simpson*

caused by a peril insured against, the insurers are liable, although the loss was also caused by the negligence of the insured or his servants (c). In such cases the loss is said to be caused proximately by the peril specified, and remotely by the negligence, and the maxim *causa proxima non remota spectatur* applies (d).

Insurances
against
collision.

Damage caused by grounding on a sunken wreck is "damage through collision with any other ship or vessels or . . . sunken . . . wreck" (e). Grounding on the toe of a breakwater is a "collision with . . . piers, stages, or similar structures" (f). Striking a barge that was sunk and about to be raised is a "collision with any other ship or vessel" (g). Striking an anchor to which another vessel was riding with a chain is collision with a "vessel" (h).

Demurrage
expenses
arising from
collision.
The "run-
ning-down"
clause.

Expenses arising from delay caused by collision are not recoverable unless the policy otherwise provides (i).

By the old form of marine policy the insurers did not undertake to repay to the assured damages which may be recovered against them for a collision in which their ship was in fault (k). But it is now usual for the insurers upon a

v. *Thompson* (1877), 3 App. Cas. 279. See also *Blythe v. Marsh*, 1 M'Cord, 360, cited in Angell on Carriers, 5th ed. 153, note, as to the law in America. Practically all insurances effected in the United Kingdom are framed on the model of the "Lloyd's policy" embodied in the Marine Insurance Act, 1906 (6 Edw. 7, c. 41), Sched. I.; see also sect. 30.

(c) Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 55. *Dixon v. Sadler* (1839), 5 M. & W. 414, 415; S. C. on app. (1841), 8 M. & W. 895; *Walker v. Maitland* (1834), 5 B. & A. 171; *Busk v. Royal Exchange Assurance Co.* (1818), 2 B. & Ald. 73; *Dudgeon v. Pembroke* (1877), 2 App. Cas. 284; *Davidson v. Burnand* (1869), L. R. 4 C. P. 117, 121.

(d) See further as to this subject, Arnold on Insurance, 7th ed. ss. 791 seq.; *Simpson v. Thompson* (1877), 3 App. Cas. 279. Cf. French Commercial Code, Arts. 350 and 353; Spanish C. C. Art. 861; Dutch C. C. Art. 637; German

C. C. Arts. 820, 821. By the two first codes, only *abordages fortuits*, by the others, all collisions, are at the insurer's risk. It has been held that loss in a collision caused by the fault of those on board the carrying ship does not arise from barratry, within the meaning of that term in a bill of lading: *Grill v. General Iron Screw Collier Co.* (1866), L. R. 3 C. P. 476. For an instance of collision as *causa proxima*, see *Reischer v. Borwick*, (1894) 2 Q. B. 548.

(e) *The Munroe*, (1893) P. 248.

(f) *The Union Marine Insurance Co. v. Borwick*, (1895) 2 Q. B. 279.

(g) *Chandler v. Blogg*, (1898) 1 Q. B. 32.

(h) *Margetts and Ocean Accident and Guarantee Association, Re*, (1901) 2 K. B. 792.

(i) Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 55; *Shelbourne v. Law Investment Corporation*, (1898) 2 Q. B. 626; *De Vaux v. Salvador* (1836), 4 A. & E. 420.

(k) *De Vaux v. Salvador* (1836),

Lloyd's policy, by a special clause, known as the "running-down" clause, to agree to pay three-fourths of any such damage. The clause in its almost invariable form at the present time does not, as will be seen below, cover every collision, nor every class of damage occasioned by a collision. These uncovered risks, together with the remaining one-fourth of the damages, are frequently covered by separate insurance under what is called a "full protection" policy.

The common form⁽¹⁾ of the running down clause in a Lloyd's policy is as follows:—

"And it is further agreed that if the Ship, hereby Insured, shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons, any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby Insured, we, the Assurers, will pay the Assured such proportion of three-fourths of the sum or sums so paid, as our subscriptions hereto bear to the value of the Ship hereby Insured, and in cases in which the liability of the Ship has been contested, with our consent in writing, we, the Assurers, will also pay a like proportion of three-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both vessels are to blame, then unless the liability of the Owners of one or both such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the Owners of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision. *Provided always that this Clause shall in no case extend to any sum which the Assured may become liable to pay or shall pay for removal of obstructions under statutory powers, for injuries to harbours, wharves, piers, stages and similar structures, consequent on such*

4 A. & E. 420. This case, once dissented from in America, is now recognized as binding by the Supreme Court: *General Mutual Insurance Co. v. Sherwood*, 14 How. 352. *Aliter* by French law: Caumont, *Dict. de Droit Mar.* tit.

Abordage; and by German law: German C. C. Art. 824.

⁽¹⁾ This form is taken from *Marine Insurance Clauses*, 1917, published by Witherby & Co. The clause approved by the Institute of London Underwriters is in similar terms.

collision or in respect of the cargo or engagements of the Insured Vessel, or for loss of life or personal injury."

Loss of life. A running-down clause expressed to cover damages which the assured ship should be compelled to pay for running down and damaging another ship was held not to include damages recovered against the insured ship by the representatives of persons on board the other ship who lost their lives in the collision (*m*). In another case (*n*) a similar clause was held not to include costs which the insured incurred in defending a collision action brought against his ship. In the form of policy in use at Lloyd's, these points are now expressly provided for; the insurers undertake to repay three-fourths of the costs, if the liability of the ship is contested with their consent; and damages for loss of life or personal injury are expressly left at the risk of the assured.

Removal of obstructions. *The North Britain* (*o*) and *The Paraguay*, by the fault of both, collided in the Scheldt. *The Paraguay* sank, and her owners were compelled to repay to the Belgian authorities the cost of raising her. *The North Britain* owners paid half this sum to *The Paraguay* owners, as damages caused by the collision; and they sought to recover this sum from the underwriters on *The North Britain*. In the policy there was a proviso that the underwriters should not be liable for "any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers." It was held upon appeal, reversing the decision of Gorell Barnes, J., that the underwriters were not liable.

Damage, to nets without collision with fishing vessel. Where the insured ship damaged the nets of a fishing vessel without coming into collision with the vessel herself, and was compelled to pay for the damage done, it was held that the insurers were not liable under a running-down clause in Lloyd's form as given above (*p*).

Collision between two Where the insured ship by negligent navigation collided

(*m*) *Taylor v. Dewar* (1864), 5 B. & S. 58. But the contrary has been held in Scotland: *Coe v. Smith* (1860), 22 Ct. of Sess. Cas. 2nd ser. 955; *Excelsior Co. v. Smith* (1860), 2 L. T. 90.

(*n*) *Xenos v. Fox* (1868), L. R. 4 C. P. 665.

(*o*) *The North Britain*, (1894) P. 77; approved in *The Engineer*, (1898) App. Cas. 382; *Burger v. Indemnity Mutual Insurance Co.*, (1900) 2 Q. B. 348.

(*p*) *Bennett Steamship Co. v. Hull Mutual Steamship Protecting Society*, (1914) 3 K. B. 57.

with another ship, and in consequence of the incidents of that collision, including the measures taken to avoid it, the other ship collided with a third, the insurers were held liable under a running-down clause in the form given above to pay three-fourths of the damages in which the insured ship had been condemned for causing the collision between the other two. The ground of the decision was that the second collision was the direct result of the first and not merely a second disaster caused by the negligence of the insured ship (*q*).

ships caused by collision between one and insured ship.

When a tug having a ship in tow comes into collision with a third vessel by the fault of both tug and tow, and the tow has to pay damages to the owners of the third vessel, insurers of the tow are liable under the usual running-down clause (*r*).

Collision between tug and third vessel.

A ship was insured in a policy containing a running-down clause, by which the insurers undertook to bear three-fourths of any sum, not exceeding the value of the ship and freight, which the assured should become liable to pay, and should pay, for collision with another ship. The ship insured was sold in an Admiralty damage suit for less than her value. It was held that the underwriters were liable for no more than three-fourths of the sum for which the ship was sold (*s*).

Value of ship.

The Balnacraig (*t*) was insured with the London Steamship Owners' Insurance Association against "loss of or damage to any other vessel . . . so far as such loss is not covered by the usual form of Lloyd's policies with the clause commonly known as the running-down clause attached." She was also insured with the same Association and at Lloyd's against the usual maritime risks, including collision. Whilst so insured she came into collision with *The Karo*, and in the collision both ships received damage, but the loss to *The Balnacraig* exceeded that to *The Karo*. Both ships were in fault, and the owners of *The Karo* (without any action being brought by or against them) paid to the owners of *The Balnacraig* the difference between half the losses on the two ships respectively. The question arose (in a claim for a set-off in an action for money received by the defendants, *The Balnacraig* owners,

Effect of running-down clause without provision as to cross-liabilities.

(*q*) *France, Fenwick & Co. v. Merchants Marine Insurance Co.*, (1915) 3 K. B. 290.

(*r*) *McCowan v. Bain, The Niobe*, (1891) A. C. 401.

(*s*) *Thompson v. Reynolds* (1857), 7 E. & B. 172.

(*t*) *London Steamship Owners' Insurance Co. v. Grampian Steamship Co.* (1890), 24 Q. B. D. 668.

for the use of the plaintiffs, the Insurance Association), whether *The Balnacraig* owners were entitled to recover against the Association a sum of 511., which sum represented one-fourth of the damage suffered by *The Karo* in the collision, and had been taken into account in reduction of the amount paid by her owners to the owners of *The Balnacraig*. It was held by Mathew and Wills, J.J., that *The Balnacraig* owners were entitled to receive nothing from the Association; that the collision clause in the Lloyd's policy never came into operation, because nothing was ever paid or payable by *The Balnacraig* owners to *The Karo* owners. The principle laid down by *The Khedive* (u) (said Mathew, J.) was, that "neither in fact nor in law is the owner of the assured ship liable to pay or entitled to receive more than the balance which equalizes the loss"; and the words of the collision clause, "become liable to pay, and shall pay," showed that it was intended to operate only where the balance of loss by collision being against the assured ship, she had to make a payment to the other ship.

Possible effect of Maritime Conventions Act, 1911, on insurer's liability.

As pointed out above (x), the Maritime Conventions Act, 1911, may have altered the law as to there being only a single liability created by a collision between two vessels, both of which are to blame, namely, a liability on the least injured to pay half the difference between the damage to her and the damage to the other. Sect. 1 of that Act may be construed as imposing on each vessel a liability to pay a proportion of the damage to the other. If this is so, the liabilities of insurers under a running-down clause not expressly providing for the event will have been altered in cases where the owners of either or both ships have limited their liabilities.

Insurance against servants' negligence.

It is a maxim of insurance law that the assured cannot recover for a loss caused by his own wrong-doing (y). But this rule does not invalidate a contract to indemnify the assured against damages payable by him in respect of loss caused by the negligence of his servants (z). Any doubt

(u) (1882), 7 App. Cas. 795.

(x) *Supra*, p. 150.

(y) See *per* Lord Campbell, *Thompson v. Hopper* (1858), 6 E.

& B. 172, 191.

(z) See *Thompson v. Reynolds* (1856), 7 E. & B. 172; *Walker v. Maitland* (1834), 5 B. & A. 171.

that formerly existed as to the validity of such insurances (a) is removed by the Merchant Shipping Act, 1894, s. 506. They may be effected without a policy (b), and have given rise to a new and special class of insurance societies or clubs.

If a ship receives her death wound in a collision which occurs during a voyage or time for which the ship is insured, and she sinks after the completion of the voyage or time, a question might arise as to the liability of the insurers. In a case mentioned by Willes, J. (c), but not reported, the insurer (d) was held not liable in such case. In *Knight v. Faith* (e), a somewhat similar case, the case above referred to was doubted, and underwriters on a time policy were held liable for a partial loss.

Loss after voyage insured from collision occurring during voyage.

After paying the amount due upon the policy for a total loss the insurers are entitled to the ship herself, salvage from her (f), and all the rights of the assured in respect of her (g). But they are not necessarily subject to liabilities to which the owner was subject in respect of her (h). So they are entitled to any damages that may be recovered against the wrong-doer in a collision by which the insured ship is injured or lost (i). And, in the case of a valued policy, the right of the insurers

Insurers subrogated to rights of insured.

(a) See *Anonymous Case* (or *De-lanoy v. Robson*) (1813), 5 Taunt. 605; *Taylor v. Dewar* (1864), 5 B. & S. 58.

(b) 54 & 55 Vict. c. 39, s. 93.

(c) *Meretony v. Dunlope* (1785), 1 T. R. 260. It appears that insured in report of 1817 is a misprint for insurer: see 15 Q. B. 664, note.

(d) See *Lockyer v. Offley* (1875), 1 T. R. 252. If a ship which is insured is injured in collision and is repaired, and afterwards becomes a total loss, the insurers are liable as well for the expense of the repairs as for the loss. But they are not liable for damage caused by the collision beyond the expense actually incurred in repairing such damage: *Stewart v. Steele* (1842), 5 Scott, N. R. 927.

(e) (1850), 15 Q. B. 649, 667. See also *Lidgett v. Secretan* (1870), L. R. 5 C. P. 190.

(f) As to what is salvage, see M.

Burnand v. Rodocanachi (1881), 6 Q. B. D. 633; 7 App. Cas. 333.

(g) See *Darrell v. Tibbits* (1880), 5 Q. B. D. 560 (a case of fire insurance).

(h) As, for example, the expense of compulsorily raising her: *Eglington v. Norman* (1877), 46 L. J. Ex. 557, overruled on another point.

(i) *Yates v. Whyte* (1838), 4 Bing. N. C. 272, 283; 5 Scott, 650; *White v. Dobinson* (1844), 14 Sim. 373; *Randal v. Cochrane* (1789), 1 Ves. 98; *Blaanpot v. Da Costa* (1841), 1 Eden, 130; *Brooks v. MacDonnell* (1835), 1 Y. & C. Ex. 500; *Midland Insurance Co. v. Smith* (1881), 6 Q. B. D. 561; *Scaramanga v. Marquand* (1886), 5 Asp. M. C. 410, 506. As to what evidence is required of the right of the insurer to sue in the name of the insured, see *The John Bellamy* (1871), L. R. 3 A. & E. 129.

is the same, although the value named in the policy is less than the actual value of the ship (*k*).

*North of
England, &c.
Assurance
Association v.
Armstrong.*

A policy of insurance was effected for 6,000*l.* upon a ship which was valued at 6,000*l.* The ship was sunk in a collision, and the underwriters paid the owners 6,000*l.*, as for a total loss. Afterwards, the underwriters, in the name of the shipowners, instituted a damage suit in the Admiralty Court against the other ship. It was held that the last-mentioned ship was solely in fault for the collision, and judgment was given against her owners for 5,683*l.* 11*s.* 7*d.*, the amount of their statutory liability. The true value of the ship insured was 9,000*l.*; and her owners claimed so much of the damages recovered in the Admiralty action as would make up the difference between the sum paid to them by the underwriters and the value of their ship. It was held that, as between the shipowner and the underwriters, the value named in the policy was conclusive, and that the underwriters were entitled to the whole of the damages, just as they would have been entitled to the ship if she had been sunk and afterwards recovered (*l*).

*The Potomac
(American
case).*

A vessel being insured by valued policies to the extent of two-thirds of her valuation, the assured agreed to assign to the insurers all right to recover damages for any loss paid for by them, and that the insurers should be entitled to such proportion of the damages recovered as the amount insured should bear to the valuation in the policies. The insurers paid to the assured two-thirds of the loss suffered by them in a collision for which both ships were in fault, and they released and assigned to the owners of the other ship their right to damages growing out of the collision. In an action by the owners of the insured ship against the owners of the other ship for damages from the collision, it was held by the Supreme Court of the United States that one-half of the two-thirds must be deducted from the sum recoverable by the owners of the insured ship against the other ship (*m*).

Assured is not
trustee for

If the assured, after receiving the amount of his loss from his insurers, recovers damages from the wrong-doer in the

(*k*) *North of England, &c. Assurance Association v. Armstrong* (1870), L. R. 5 Q. B. 244; *Thames and Mersey Marine Insurance Co. v. British and Chilian Steamship*

Co., (1915) 2 K. B. 214.

(*l*) *North of England, &c. Assurance Association v. Armstrong* (1870), L. R. 5 Q. B. 244.

(*m*) *The Potomac*, 15 Otto, 630.

collision, he is not a trustee of such damages for the underwriter, though bound to pay them over to him *(n)*. But the fact that the plaintiff in a collision action has been compensated for his loss by his insurers is no answer to his claim for damages against the wrong-doer *(o)*.

insurer of damages recovered; he may sue wrong-doer notwithstanding payment by insurers.

The defendants insured their ship, *The Queen of the East*, for 1,000*l.* with the plaintiffs; and insured the freight elsewhere. The ship, while proceeding to a port of loading under a charter-party, was run into and damaged by *The Cassandra*. The defendants abandoned their ship to the plaintiffs, who settled with the defendants as for a total loss. The defendants afterwards recovered in the Admiralty Division against the owner of *The Cassandra* damages in respect of the loss of their ship and also in respect of loss of freight. It was held that the plaintiffs were not entitled to recover against the defendants the damages recovered by them for loss of freight. The money had been paid by the defendants to the insurers on freight, and, in the opinion of the Court of Appeal, rightly so paid *(p)*.

In an action in which the insured could not have recovered damages, neither can the underwriters. They have no right of action apart from him *(q)*; and in a case in Admiralty before the Judicature Act it was held that they must sue in his name *(r)*.

Insurers cannot recover where insured could not have recovered.

Where a collision occurred between two ships belonging to the same owner, and one of them, with cargo on board not belonging to the shipowner, was sunk by the fault of the other ship, the shipowner paid into Court, under the Merchant Shipping Acts, the amount to which his liability, as owner of the wrong-doing ship, was limited. It was held, that as against the cargo-owners, underwriters upon the innocent ship, who had paid the insurance upon her, were

Rights of underwriters in case of collision between ships of the same owner.

(n) *Stearns v. Village Main Reef Goldmining Co.* (1905), 10 Com. Cas. 89.

(o) *Mason v. Sainsbury* (1782), 3 Dougl. 61; *Yates v. Whyte*, *ubi supra*; *Taylor v. Dewar* (1864), 4 B. & S. 58. And see *Bradburn v. Great Western Rail. Co.* (1875), L. R. 10 Ex. 1; *The Yeager*, 20 Fed. Rep. 653; *The Potomac*, 13 Fed. Rep. 399.

(p) *Sea Insurance Co. v. Hadden* (1884), 53 L. J. Q. B. 252; 13 Q. B. D. 706.

(q) *Simpson v. Thompson* (1877), 3 App. Cas. 279.

(r) *The Regina del Mare* (1864), Br. & L. 315; *The John Bellamy* (1871), L. R. 3 A. & E. 129; *Midland Insurance Co. v. Smith* (1881), 6 Q. B. D. 561.

entitled to no part of the money paid into Court (s). The decision would, it seems, be the same in the case of a collision between two ships owned in part by the same persons.

In *Simpson v. Thompson* the members of the House of Lords who addressed the House declined to express an opinion whether the ordinary marine policy covers a loss by collision with another ship belonging to the assured.

No general average contribution for damage in collision.

Damage to ship or goods by collision is not the subject of general average contribution; and the insurers will not ordinarily be liable to contribute in such case. But for loss voluntarily incurred in consequence of collision, as where gear and wreckage is cut away for the safety of the ship, the shipowner has recovered by way of general average contribution (t). In such a case the underwriter would be liable.

A collision between a barque and a steamship being inevitable, without fault on the part of the barque, the barque altered her course so as to strike the steamship stem on, and thereby probably saved herself from being sunk with her cargo. In consequence of the collision she had to go into a Danish port for repairs. She was arrested at the suit of the steamer, and by a decree of the Danish Court her owners were compelled to pay half the difference of the losses on the two ships. They sought to recover this sum, together with the cost of the repairs to their own ship, and of the proceedings in the Danish Court, as general average contribution from the owners of cargo. It was held by a Massachusetts Court that they could not recover (u).

INCIDENTAL RIGHTS AND LIABILITIES ARISING OUT OF COLLISION.

Criminal liability for a collision.

Beyond incurring the civil liability for damages, the person guilty of reckless or negligent navigation, whereby a collision occurs in which life is lost, or bodily injury suffered, may be prosecuted criminally. "Those who navigate impro-

(s) *Simpson v. Thompson* (1877), 3 App. Cas. 279. The rights and liabilities of underwriters were very fully discussed in this case.

(t) *Plummer v. Wildman* (1815), 3 M. & S. 482. See also *The Ettrick* (1881), 6 F. D. 127, as to the

right of the shipowner to general average contribution from cargo-owner whose goods were sunk in collision and raised with the ship.

(u) *Emery v. Huntington*, 12 Amer. Rep. 725.

perly, either by too much speed, or by negligent conduct, are as much liable, if death ensues, as those who cause it on a public highway, either by furious driving or negligent conduct" (x). The criminal liability attaches only to those by whose personal misconduct or negligence the collision occurs (y). But where a foreign ship, in charge of an English pilot in the Thames, ran down a boat and drowned a man, and the collision was caused by the man at the helm, a foreigner, not understanding and carrying out the pilot's orders, it was held that the pilot was guilty of manslaughter, if by his own negligence he failed to make his orders understood (z).

The master, pilot, or any seaman of a British ship, who wilfully or negligently endangers the life of any person on board such ship, or endangers the ship herself, is guilty of a misdemeanour (a).

Malicious injury to a boat used for the guidance of seamen or for purposes of navigation is felony (b).

Where an infringement of the collision regulations causes damage, the person in charge of the deck is guilty of a misdemeanour (c).

Infringement
of the regu-
lations.

Wilful infringement of the regulations by a master or owner is a misdemeanour punishable by fine or imprisonment. In case of damage arising from such infringement, the person in charge of the deck is liable to these penalties, unless it is proved that departure from the regulations was necessary (d). And although the master or person in charge of the ship is liable criminally, the owner is answerable in a civil action for damage caused by his officer's negligence (e).

(x) *Per Parke, B.*, in *Reg. v. Taylor* (1840), 9 C. & P. 672, 674.

(y) *Reg. v. Allen* (1836), 7 C. & P. 153; *Reg. v. Green*, *ibid.* 156; *Reg. v. Barrett* (1847), 2 C. & K. 393; *Reg. v. Haines*, *ibid.* 368; and see *Oakley v. Speedy* (1879), 40 L. T. 881.

(z) *Reg. v. Spence* (1846), 1 Cox, C. C. 352. See *London School Board v. Lardner*, Times, 20 Feb. 1884.

(a) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 220, 607.

(b) Malicious Damage Act, 1861

(24 & 25 Vict. c. 97), s. 48.

(c) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 419, 680.

(d) As to whether an infringement of local regulations is within the penalty of these Acts, see *The Lady Downshire* (1879), 4 P. D. 26; *The Swansea* and *The Condor* (1877), 4 P. D. 115.

(e) See *Grill v. General Iron Screw Collier Co.* (1866), L. R. 3 C. P. 476, where it was held that wilful infringement of the regulations was not barratry within the meaning of a bill of lading.

Criminal liability where the ship or the offender is foreign, or the collision occurs abroad.

In the case of a collision caused by the criminal fault of a foreigner, or where the collision occurs abroad, if it is sought to punish the offender in this country, questions of difficulty arise as to his liability to the criminal law of England, and the jurisdiction of our Courts. The liability and jurisdiction depend upon (1) the offender's nationality; (2) the flag of the ship on board which the offence was committed; and (3) the place of collision. The subject does not belong to the present treatise; but it has been the occasion of much discussion as to the limits of municipal and Admiralty jurisdiction. The cases are collected below (f).

Officer's certificate may be cancelled.

If a collision involving loss of life or serious damage to either ship is caused by the wrongful act or default of an officer holding a Board of Trade certificate, his certificate may be cancelled or suspended at a Board of Trade inquiry (g).

Salvage after collision.

One of the consequences of negligence causing collision is that the wrong-doer cannot recover salvage remuneration for service rendered to the ship with which he has been in collision, although the latter is also in fault for the collision (h); nor, *à fortiori*, can he claim salvage against the innocent owner of cargo on board her. Nor can a tug recover salvage reward for assistance rendered to a ship with which her tow has been in collision by the fault of herself, the tug (i). An innocent ship may recover salvage for services rendered to another which has negligently run into her. The law which makes it the duty of a ship which has been in collision with another to stand by her, and render assistance, does not prevent her from recovering salvage reward for assistance so

(f) *Reg. v. Keyn* (1876), 2 Ex. D. 63, 232, *seq.*; *Reg. v. Sattler* (1857), D. & B. C. C. 525; *Reg. v. Anderson* (1868), L. R. 1 C. C. R. 161; *Reg. v. Carr* (1882), 10 Q. B. D. 76; *Reg. v. Seberg* (1870), L. R. 1 C. C. R. 264; *Cunningham's Case*, Bell's C. C. 220, 234; *Reg. v. Menham* (1857), 1 F. & F. 369; *Reg. v. Lewis* (1857), 1 D. & B. C. C. 132.

(g) Merchant Shipping Act, 1894 (57 & 58 Viet. c. 60), ss. 469, 470.

(h) *Cargo ex Capella* (1866), L. R. 1 A. & E. 356, followed in

The Castle Rising, Ad. Div. March, 1886; *The Ettrick* (1881), 6 P. D. 127; and see *The Glengaber*, L. R. (1871) 3 A. & E. 534. The rule is the same in America: *The Clarita*, 23 Wall. 1; *The Sampson*, 4 Blatchf. 28; *The Charles E. Soper*, 19 Fed. Rep. 844.

(i) *The Glengaber*, *ubi supra*; *The Altair*, (1897) P. 105. Where the fault of the tug was a statutory infringement of the regulations as to lights, her claim to salvage was not disallowed: *The Veritas*, (1901) P. 304.

given (*k*). A tug is entitled to salvage remuneration from one of two ships in collision to which she renders assistance by towing the other clear (*l*). And it seems that upon the same principle, a vessel would be entitled to salvage remuneration for holding one ship off another towards which she is driving.

Salvage for towing ships clear of each other.

A salvor damaged, without negligence on her own part, by collision with the vessel she is assisting, may recover against the latter (*m*); and a vessel engaged in rendering a salvage service to another does not forfeit her right to salvage by going into collision with the other, even though there was negligence on her part such as to make her liable in damages for the collision (*n*).

Tug or salvor in collision with the vessel she is assisting.

Where two vessels were in collision, and entangled together in a position dangerous to both, the propeller of one being foul of the chain cables of the other, a tug which, by towing ahead the vessel at anchor, enabled her to slip from her anchors, and so get clear from the vessel which was foul of her, was held to be entitled to recover salvage award from both vessels (*o*).

A salving tug was in America held liable to a third ship which the salved ship struck and injured by reason of the insufficient power of the tug, although the salvage service (towing out of dock a ship on fire) was properly undertaken, and there was no negligence on the part of the tug in performing it (*p*).

The fact that some of the owners of a ship that rendered salvage service to another were also owners of the ship whose negligence had done the mischief, and rendered the service necessary, was held not to deprive the salving ship of the right to salvage remuneration (*q*). Sir R. Phillimore said:—

(*k*) *The Retriever* and *The Queen* (1868), 17 L. T. 329.

(*l*) *The Vandyck* (1882), 7 P. D. 42.

(*m*) *The Mud Hopper* (1879), 4 Asp. M. C. 103.

(*n*) *The C. S. Butler* and *The Baltic* (1873), L. R. 4 A. & E. 178. In *The Diana* (1874), 2 Asp. M. C. 366, the owners of a ship which had been found to blame for collision were allowed to intervene in a salvage suit instituted by third

parties against the injured ship, and to have the conduct of the defence. In *The Dwina*, (1892) P. 58, the amount of the damage was deducted from the salvage award.

(*o*) *The Vandyck* (1882), 7 P. D. 42.

(*p*) *The Ashbourne*, 99 Fed. Rep. 111.

(*q*) *The Glengaber* (1872), L. R. 2 A. & E. 534.

"I know of no authority for the proposition that a vessel wholly unconnected with the act of mischief is disentitled to salvage reward simply because she belongs to the same owners as the vessel that has done the mischief."

Collision with
tow by fault
of tug is
breach of
towage
contract.

If by the negligence of those on board a tug in the performance of the towage the ship in tow is damaged by collision with a third ship, or damages a third ship, and is compelled to make such damage good, there is a breach of the towage contract, and the tug can recover nothing in respect of the towage service (*r*). And we have seen (*s*) that, beyond forfeiting their right to remuneration, the owners of the tug, and the tug herself, are liable to the owners of the tow for the loss. Where a vessel in tow is injured in a collision, and has to stop and repair her damages, the tug is not entitled in a towage action to further remuneration beyond the sum agreed for towage, because she voluntarily stands by whilst the repairs are being effected, and then completes the towage (*t*).

General
average con-
tribution.

Damage received in a collision by a ship or cargo is not the subject of general average contribution; and this is so whether the ship was in fault for the collision or not. But loss voluntarily incurred for the benefit of all concerned after and in consequence of a collision for which the ship was not in fault (*u*), and salvage expenses incurred under the same circumstances (*x*), may be recovered as general average. The owners of a ship sunk in collision by her own fault cannot recover by way of general average contribution from cargo-owners any part of the expense of raising the cargo (*y*).

Expense of
raising ship
sunk in
collision.

If a ship after collision sinks, her owners are in some places liable under local Acts to the harbour authority or other public body for the expense of raising her; and such

(*r*) *The Christina* (1852), 3 W. Rob. 27. *Semble, aliter* where the contract is for salvage service: *The C. S. Butler* (1874), L. R. 4 A. & E. 178.

(*s*) *Supra*, pp. 204 *seq.*

(*t*) *The Hjemmet* (1880), 5 P. D. 227.

(*u*) See *Plummer v. Wildman* (1815), 3 M. & S. 482. This case was much discussed in *Attwood v. Sellar* (1880), 5 Q. B. D. 286.

(*x*) See *per Brett, M. R.*, in *The Ettrick*. (1881), 6 P. D. 127; *Kemp v. Halliday* (1866), L. R. 1 Q. B. 520. But see *Greer v. Poole* (1880), 5 Q. B. D. 272.

(*y*) *The Ettrick* (1881), 6 P. D. 127. Cf. *Scaramanga v. Marquand* (1886), 5 Asp. M. C. 410, 506, as to the rights of the cargo-owner and his underwriters, *supra*, pp. 251 *seq.*

expense may usually be recovered by the authorities by sale of the ship and cargo (z).

If a vessel wilfully or negligently injures a lightship, she incurs, in addition to her liability for damages, a penalty of 50*l.* (a). Penalty for injuring lightship.

As to the right of the holder of a bottomry bond on freight to share in the amount of the wrong-doing shipowner's statutory liability, see above, p. 192. Rights of holder of bottomry bond on freight.

(z) As to the Thames, see *The Ettrick* (1881), 6 P. D. 127; *The Harrington* (1888), 13 P. D. 48; *The Sea Spray*, (1907) P. 133; the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.); 20 & 21

Vict. c. 147 (local); the Tyne, see *The Crystal*, (1894) App. Cas. 508.

(a) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 666.

CHAPTER XII.

PRACTICE (a).

Practice generally.

THE rules, orders and regulations for the High Court of Admiralty, 1859 and 1871, are repealed (b), and the practice of the Admiralty Division of the Supreme Court is governed by the Judicature Acts and the Rules of the Supreme Court; but where no other provision is made the former procedure and practice remain in force (c).

Service of writ out of the jurisdiction.

Neither in the Admiralty (d) nor in the King's Bench Division (e) can a personal action for damages, in respect of a collision occurring below low-water mark of the United Kingdom, be brought against a person not domiciled or ordinarily resident within the jurisdiction (f) unless the writ of summons be served within the jurisdiction. In such a case, service of the writ out of the jurisdiction will not be ordered except where the person to be served is a necessary or proper person to an action properly brought against another person who has been duly served within the jurisdiction (g).

Address of writ.

A writ addressed to a person resident abroad and intended to be served upon his coming within the jurisdiction, will not be set aside merely because it describes him as having an English address (h). A writ addressed to a foreign corporation without any further description than the style of

(a) The present chapter in an epitome of practice cases which have arisen in collision actions. For information upon Admiralty practice generally, the reader is referred to Williams & Bruce, Admiralty Practice; Roscoe's Admiralty Law and Practice; Raikes & Kilburn, Admiralty Jurisdiction of the County Courts.

(b) R. S. C., Appendix O.

(c) R. S. C., Ord. LXXII. r. 2.

(d) *In re Smith* (1876), 1 P. D. 300; *The Vivar* (1877), 2 P. D. 29; *The Helenslea* (1882), 7 P. D. 57.

(e) *Harris v. Owners of the Franconia* (1877), 2 C. P. D. 173.

(f) Ord. XI. r. 1, sub-s. (c). As to a foreign corporation carrying on business in this country (Ord. IX. r. 8), see *The Bourgoyne*, (1899) App. Cas. 431.

(g) *The Duc d'Aumale*, (1903) P. 18; action against English tug; tow French, and collision on high sea; service of note of writ on French owners of tow ordered under Ord. XI. r. 1 (g). See also *The Hagen*, (1908) P. 189.

(h) *The Helenslea*, *ubi supra*.

the corporation will be set aside (*i*); and a writ served upon the clerk of a firm who in this country act as agents of a foreign corporation, will be set aside (*k*).

In an action *in rem* the writ of summons was served in the manner provided by Ord. IX. r. 12. No appearance was entered, and the action came on for judgment by default under Ord. XIII. rr. 12, 13. The writ had been served by the solicitor's clerk, who made the affidavit of service. It was held that the service was valid, and that service by the marshal or his substitute was not necessary (*l*).

By whom to be served.

The old practice of the Admiralty enabling plaintiffs to sue as "owners" of ship or cargo without naming them is not abrogated by the Judicature Act rules (*m*), but in all actions for limitation of liability the names of the owners should be set out (*n*).

Plaintiffs may sue as "owners."

The enactment, R. S. C., Ord. XIX. r. 28, requires preliminary acts to be filed in actions for collision between vessels (*o*). No preliminary act is required in an action by the owner of a ship in tow against the owner of a tug for negligent towage, whereby a collision was caused between the tow and a third ship (*p*); but in the absence of evidence that it was impossible to file a preliminary act, it was held necessary in an action by the owner of cargo on board a barge against a ship with which the barge was in collision (*q*). In an action by the owners of cargo against the carrying ship for damage to cargo by collision caused by the fault of the carrying ship, no preliminary act is necessary (*r*). A floating landing stage is not a vessel, therefore no preliminary acts are required in an action arising from a collision between a steamship and a landing stage (*s*).

Preliminary act.

(*i*) *The W. A. Scholten* (1889), 13 P. D. 8.

(*k*) *The Princesse Clémentine*, (1897) P. 18.

(*l*) *The Solis* (1885), 10 P. D. 62.

(*m*) *The Assunta*, (1902) P. 150; *The Maréchal Suchet*, (1896) P. 233.

(*n*) *The Inventor* (1906), 10 Asp. 99.

(*o*) Including cases of injury to person; *Webster v. Manchester, Sheffield, &c. Rail. Co.* (1884), 5

Asp. M. C. 256, note.

(*p*) *Armstrong v. Gaselee* (1889), 22 Q. B. D. 250.

(*q*) *Secretary of State for India v. Hewett* (1888), 6 Asp. M. C. 384. There had been an action in Admiralty between the barge and the ship. This is the case referred to by Huddleston, B., in *Armstrong v. Gaselee* (1889), 22 Q. B. D. 252.

(*r*) *The John Boyne* (1877), 3 Asp. M. C. 341.

(*s*) *The Craighall*, (1910) P. 207.

The information must be given fully; any concealment will be viewed by the Court with suspicion (*t*). In answer to the question as to the lights seen subsequently to the light first seen, each combination of lights seen should be stated (*u*). When a vessel in a river is on a fixed course, as opposed to a course which has constantly to be changed, either the magnetic or the true course should be stated, and not the compass course (*x*).

Each party is required in his preliminary act to state the material facts upon which he founds his case.

Contents and
object of
preliminary
act.

The object of the preliminary act was explained by Dr. Lushington in *The Vortigern* (*y*). "Preliminary acts were instituted for two reasons—to get a statement from the parties of the circumstances *recenti facto*, and to prevent the defendant from shaping his case to meet facts put forward by the plaintiff." Consequently, the Court will not allow a party before (*z*) or at (*a*) the hearing to depart from or amend (*b*) his preliminary act, but this practice has been sometimes departed from. The statements in a preliminary act are admissions of fact, binding the party making them as strongly as any admissions can, and may not be departed from without leave (*c*).

Proof must be
secundum
allegata.

It was a rule of the Admiralty Court that a plaintiff in framing his statement of claim must state the circumstances of the collision, so far as they are known to him (*d*), with sufficient clearness and accuracy to enable his adversary to know the case which he has to meet (*e*). The particular acts of negligence which caused the collision must be stated in specific terms. Where the plaintiff alleged that the collision was caused by the starboarding of the helm of the defendant ship, and the fact was that the helm was never starboarded,

(*t*) *The Godiva* (1886), 11 P. D.

20.

(*u*) *The Monica*, (1912) P. 142.

(*x*) *The Rixewaulx Abbey* (1911),

11 Asp. M. C. 437.

(*y*) (1859), Swab. 518.

(*z*) *The Miranda* (1882), 7 P. D.

185.

(*a*) *The Frankland* (1872), L. R.

3 A. & E. 511; *The Vortigern* (1857), Swab. 518.

(*b*) *The Miranda* (1882), 7 P. D.

185.

(*c*) *The Seacombe, The Devonshire*, (1912) P. 21, 59, *per* Fletcher Moulton, L. J.

(*d*) As to when they are not known, see *The Schwalbe* (1859), Swab. 521; *The England* (1847), 5 Not. of Cas. 174; *The Kanawha* (1911), 12 Asp. M. C. 317.

(*e*) The whole subject is exhaustively dealt with in Roscoe's Admiralty Practice, 3rd ed., pp. 325 *seq.*; and see Ord. XIX. r. 4.

the plaintiff failed to recover, although it was proved that his adversary's ship was in fact alone to blame (*f*), but since the Judicature Acts the rules as to strictness of pleading have been relaxed, and amendments are allowed so as to prevent any technical injustice, and the rule that proof must be *secundum allegata* is enforced only so far as the *allegata* are material (*g*), in other words, so far as the non-observance of the rule has made it impossible for the defendant to meet the case brought against him.

If any of the regulations for preventing collisions at sea have been infringed, it has always been the practice (*h*) for the plaintiff to specify which they are. In the absence of such an allegation in his pleadings, it is doubtful if evidence of the infringement would be admitted (*i*). But it is not essential that the plaintiff should prove all the allegations made in his statement of claim; if he proves the material part of the case alleged, it will be sufficient (*k*). An allegation that the defendant ship was alone in fault does not prevent the plaintiff from obtaining a judgment for half his loss upon proof that both ships were in fault (*l*).

Infringement of regulations must be specifically alleged.

The defendant in his defence, besides traversing all the allegations of the plaintiff he intends to deny, should state the circumstances of the collision (*m*). Thus, if the defence is that the plaintiff gave him a foul berth, he must so plead. Before the Judicature Acts it was held that it was not sufficient for him simply to traverse the plaintiff's statements (*n*). But the plaintiff must prove his case, and where he fails to

Defence.

(*f*) It was so held before the Judicature Acts: *The Ann* (1860), Lush. 55; *The Marpesia* (1872), L. R. 4 P. C. 212; *The North American* (1858), Swab. 358; *The Haswell* (1864), Br. & L. 247. See also *The Hochung* and *The Lapwing* (1881), 7 App. Cas. 512.

(*g*) *The Alice and Rosita* (1868), L. R. 2 P. C. 214.

(*h*) *The Ebenezzer* (1844), 2 W. Rob. 206, 211; *The Bothnia* (1860), Lush. 52, 54.

(*i*) See *The New Pelton*, (1891) P. 258, 263. In *The Perim*, Ad. Div. 10th Nov. 1886, Sir J. Hannen allowed an amendment of the statement of claim at the trial by inserting a charge of breach of the "starboard side" rule. Cf. *The Lady Ann* (1850), 7 Not. of Cas.

364, 370, where under special circumstances the defendant ship was found to blame for a failure to port which was not alleged in the pleadings.

(*k*) *The Amalia* (1864), Br. & L. 311, 314. See also *The Despatch* (1860), Lush. 98; *The Lady Ann*, 7 Not. of Cas. 370; *The England* (1847), 5 Not. of Cas. 170; *The East Lothian* (1860), Lush. 241, 248.

(*l*) *The Aurora* and *The Robert Ingram* (1860), Lush. 327, 329.

(*m*) For the old practice, see *The Virgil* (1844), 2 W. Rob. 204; *The Ironmaster* (1860), 6 Jur. N. S. 782.

(*n*) *The Why Not* (1868), L. R. 2 A. & E. 265.

do so, he will not succeed merely because the defendant has in his defence told a story of the collision which he fails to prove (o). Where the defence is "inevitable accident," it is usual in terms so to plead. If the defence is that of compulsory pilotage, it is the practice, and it would seem to be necessary, for the defendant to plead it (p).

In an appeal (q) before the Privy Council the appellant will not be allowed to raise, for the first time, the question, not raised in the Court below or referred to in the pleadings, whether the respondent's ship was not also in fault for infringing one of the regulations. Where there is no allegation of contributory negligence, a party who pleads, and, in the Court below, relies on fault in the other ship alone, cannot for the first time upon the appeal raise the point of contributory negligence.

Judgment at law : whether it can be pleaded in Admiralty.

Prior to the Judicature Acts it was held that a verdict and judgment in an action at law that one of two ships, B., was in fault for the collision, and that the defendants, her owners, were liable to the plaintiffs for the amount of their loss, were no bar to subsequent proceedings in Admiralty *in rem* against the ship A. by the defendants in the common law action; and that the judgment at law could not be pleaded or given in evidence in the Admiralty action (r). It is difficult to reconcile this decision with the principle that a decision in the presence of the parties upon the merits is *res judicata*; a principle which seems to apply whether the judgment is at law or in Admiralty proceedings *in rem*. Where a defendant at law pleaded a decree of the Admiralty Court upon the merits in his favour, it was held that the plea was bad, because it did not show that the Admiralty Court had jurisdiction (s).

Foreign judgment.

As to the effect in the Courts of this country of a foreign

(o) See *The East Lothian* (1860), Lush. 241.

(p) For the old practice, see *The Canadian* (1842), 1 W. Rob. 343; *The Northampton* (1853), 1 Sp. 155, note; *The Alhambra* (1864), Br. & L. 286; *The European*, Williams & Bruce, 3rd ed. 354, note (g).

(q) *The Tasmania* (1890), 15 App. Cas. 223; *The Pleiades* and *The Jane*, (1891) App. Cas. 259.

(r) *The Clarence* (1853), 1 Sp. 206; but see *per* Knight-Bruce, L. J., 1 Sp. 209, note; and see *The Ann and Mary* (1843), 2 W. Rob. 189; *semble*, the case referred to in *The Clarence*. See also *The Sylph* (1867), L. R. 2 A. & E. 24; *The Antelope* (1873), L. R. 4 A. & E. 33; *The Due Checchi* (1872), L. R. 4 A. & E. 35, note.
(s) *Harris v. Willis* (1855), 15 C. B. 710.

judgment in action relating to the collision, see above, pp. 233 *et seq.*

It is not clear whether under the Merchant Shipping Act, 1894, ss. 239 (6), 240, the official log is admissible in evidence (*t*). The ship's log is not, though the mate who wrote it is dead (*u*). But both these documents often afford valuable evidence against the ship (*x*).

A protest (*y*), and a deposition made before a receiver of wreck (*z*), also the record of proceedings at an inquiry under the Merchant Shipping Acts (*a*), at a naval court-martial (*b*), at an inquiry by a pilotage authority (*c*), or at a coroner's inquest (*d*),—are not admissible in evidence, except for the purpose of the cross-examination of a witness who has given evidence in chief inconsistent with his previous statements.

The original depositions taken before the receiver must be produced, and copies cannot be put in (*e*). The Board of Trade usually refuses to supply copies of the depositions made by those on board one ship, unless those on board the other ship have also made them.

Copies of entries in the official journals kept by coast-guardsmen, and copies of entries in lighthouse and lightship logs.

(*t*) There have been no decisions on this point.

(*u*) *The Henry Coxon* (1878), 3 P. D. 156. In *The Singapore* (1866), L. R. 1 P. C. 378, the ship's log, though objected to, appears to have been used as evidence for the ship.

(*x*) See observations by Westbury, C., in *The Singapore*, *supra*, as to the value of the ship's log as evidence against the ship, and as to alterations discrediting the log.

(*y*) *Christian v. Coombe* (1795), 2 Esp. 439; *The Ljudica* (1871), 23 L. T. 474; *The Emma* (1850), 2 W. Rob. 315; *The Hedwig* (1853), 1 Sp. 19. As to the value of such evidence, see *The Osmanli* (1850), 7 Not. of Cas. 507, 510.

(*z*) *The Little Lizzie* (1871), L. R. 3 A. & E. 56; *Nothard v. Pepper* (1864), 17 C. B. N. S. 39; *The Henry Coxon*, *ubi supra*. As to inspection of copies of these depositions furnished to the adverse party by the Board of Trade, see *The Palermo* (1884), 9 P. D. 6.

(*a*) *The Mangerton* (1857), Swab. 120; *The City of London* (1857), Swab. 245.

(*b*) *H.M.S. Swallow* (1857), Swab. 30 (the report of a naval officer to the Lords of the Admiralty is privileged as a State document, and no order to produce it will be made); *The Bellerophon* (1874), 2 Asp. 449.

(*c*) *The Lord Seuton* (1845), 2 W. Rob. 391.

(*d*) *The Mangerton* (1857), Swab. 120.

(*e*) It was so held by Butt, J., in *The Risca*, 25th March, 1886; *The Benayo*, 29th March, 1886; and (*semble*) by Dr. Lushington in *The Emperor* and *The Zephyr* (1864), 12 W. R. 890; *The Oscar* (1864), 12 W. R. 872. See also *per* Tindal, C. J., *Bastard v. Smith* (1839), 10 A. & E. 213, 214; *Davies v. Davies* (1839), 9 C. & P. 252; *Highfield v. Peake* (1828), M. & M. 109; *Burnand v. Nerot* (1824), 1 C. & P. 578; *Ewer v. Ambrose* (1825), 4 B. & C. 25.

Evidence.
Logs.

Depositions.
Results of
proceedings at
inquiry, &c.

Protest;
deposition
before receiver
of wreck.

Coastguard
and lightship
logs.

logs relating to the weather, are usually admitted in the Admiralty Division upon production of an affidavit by the proper officer (*f*).

Statements by master;

by seamen and others.

Statements by the master as to matters in issue are admitted to prove the facts stated against the owner (*g*); but not statements by other officers, by seamen (*h*), or by the pilot (*i*), though statements by seamen and others on board, made at the moment of collision, have in some cases been admitted as part of the *res gestæ* (*k*).

Letter by owner.

In an action by cargo-owner against shipowner for loss of cargo by stranding, a letter written by the master to the shipowner, detailing the facts of the stranding, was admitted as evidence of those facts (*l*).

Evidence in previous action.

Evidence in a previous action for the same collision, but between different parties, is not admissible in the subsequent action (*m*). But where, after judgment in an action by the owner of ship A. against the owner of ship B., the latter sued the former in a fresh action for the same collision, evidence in the first action was allowed to be read in the subsequent action (*n*).

Regulations; how proved.

As to the mode of proving the regulations for preventing collisions at sea, see the Merchant Shipping Act, 1894, ss. 695, 719, 738.

Proof of compulsory pilotage where pilot is hostile.

Where the defence raised is that of compulsory pilotage, and the defendant has reason to think that the pilot will be a hostile witness, upon the facts of the collision, the proper course for him to take is to subpoena the pilot to produce his licence, and to be provided with evidence identifying him with the person named in the licence.

Interrogatories.

There was at one time a doubt whether, in a collision action,

(*f*) An examined copy is sufficient: *The Maria des Dore* (1863), Br. & L. 27; *The Catherina Maria* (1866), L. R. 1 A. & E. 53.

(*g*) *The Midlothian* (1851), 15 Jur. 806; *The Manchester* (1840), 1 W. Rob. 63; *The Europa* (1849), 13 Jur. 856; *The Actæon* (1853), 1 Sp. 176; *The Solway* (1885), 10 P. D. 137. And so in America: *The Potomac*, 8 Wall. 590.

(*h*) *The Lord Seaton* (1845), 2 W. Rob. 391, 393; *The Foyle* (1860), Lush. 10; and see *The Great Eastern* (1864), Holt, 167.

(*i*) *The Lord Seaton* (1845), 2 W. Rob. 391, 393; *The Schwalbe* (1857), Swab. 521.

(*k*) *The Schwalbe* (1859), Swab. 521; *The Mellona* (1846), 10 Jur. 992.

(*l*) *The Solway* (1885), 10 P. D. 137. See *The Neptune the Second* (1813), 1 Dods. 467, 469.

(*m*) *The William Hutt* (1860), Lush. 25; *The Demetrius* (1872), L. R. 3 A. & E. 523.

(*n*) *The North American* (1859), Lush. 79. See Ord. XXXVII. r. 3.

interrogatories with respect to matters stated in the preliminary acts, and the other circumstances of the collision, could be administered. Interrogatories are admissible in some cases (*p*), but not in an ordinary collision action.

In answering interrogatories, a defendant in a collision action must answer as to matters touching the collision which are in the knowledge of his servants or agents, the master and crew (*q*).

Answering
interroga-
tories.

Discovery and inspection of books may be had for the purpose of ascertaining the value of a ship as shown in her owners' books before the reference to assess damage (*r*).

Discovery
and inspection
of documents.

It was formerly the practice, in the Court of Admiralty, where the plaintiff's ship was at anchor, or where the sole defence was inevitable accident, for the defendant to begin. This practice has been changed, and the rule now is that plaintiff shall in all cases begin (*s*); or, at least, in all cases where (as, *semble*, is always the case) the onus of proof is upon him (*t*).

Who to begin
in collision
action.

Power is given to any party to an Admiralty action to apply for an order for inspection of any ship or other personal or real property, the inspection of which may be material to the issue of the action (*u*). This power was exercised, in *The Magnet*, with reference to ship's lights (*x*); also in *The Germania* (*y*). In one case (*z*), it was held that the order will not be made where the party applying has an opportunity of proving the facts by evidence in the ordinary way.

Order to
inspect.

In the Court of Appeal and in the Admiralty Division, nautical assessors advise the Court upon questions of seamanship. In the King's Bench Division, assessors are not, in practice, but may be (*a*), called in. In the King's Bench

Nautical
assessors :
evidence of
experts not
admissible.

(*p*) *The Biola* (1876), 34 L. T. 135.

(*q*) *The Radnorshire* (1880), 5 P. D. 172; *The Isle of Cyprus* (1890), 15 P. D. 134 (crew of plaintiff's ship drowned).

(*r*) *The Pncuare*, (1912) P. 179.

(*s*) See *The Otter* (1874), L. R. 4 A. & E. 203; *The Benmore* (1874), L. R. 4 A. & E. 132.

(*t*) See *supra*, p. 40, as to burden of proof.

(*u*) The Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 18;

and see now Ord. L. r. 3, of the R. S. C. 1883.

(*x*) (1874), L. R. 4 A. & E. 417, 428.

(*y*) (1870), 19 L. T. 20; 21 L. T. 44.

(*z*) *The Victor Covacevitch* (1885), 10 P. D. 40.

(*a*) 36 & 37 Vict. c. 66, s. 56. For the old practice, see *Melton v. Nesbit* (1824), 1 C. & P. 70; *Sills v. Brown* (1840), 9 C. & P. 601; *Fenwick v. Bell* (1843), 1 C. & K. 312.

Division, matters of seamanship may be proved by experts; in Admiralty, and, it seems, in any Court where assessors are present to advise the Court, such evidence is not admissible (*b*). Thus in one case evidence directed to show what was the usual mode of navigating ships in the entrance to the Mersey was held to be inadmissible in the Admiralty Division (*c*).

Function of assessors.

The function of the assessors is not to decide questions of fact arising in the case (*d*), but to advise the Court upon nautical matters (*e*), and the decision of the case rests entirely with the judge. Even in purely nautical matters he is not bound to follow the advice of his assessors, if it does not agree with his own opinion (*f*), though their advice will be rarely questioned (*g*). The advice of the Trinity Brethren in the Admiralty Division upon a question of pure seamanship does not conclude the case, and may give rise to an appeal (*h*). If the Trinity Brethren differ in opinion, the Court has on more than one occasion obtained the opinion of one or more of the other Brethren (*i*). In a case where the judge differed in opinion from the Trinity Brethren, and they reduced their views and the reasons for them to writing and at his request preserved them in case the Court of Appeal should call for them, that Court refused to order the Admi-

(*b*) *The Gazelle* (1842), 1 W. Rob. 471; *The Ann and Mary* (1844), 2 W. Rob. 189, 196; *The No* (1854), 1 Sp. 184; *The Sir Robert Peel* (1881), 4 Asp. M. C. 321; *The Earl Spencer* (1874), L. R. 4 A. & E. 431; *The Assyrian* (1889), 6 Asp. M. C. 525.

(*c*) *The Kirby Hall* (1883), 8 P. D. 71. But in *The Velocity* (1869), L. R. 3 P. O. 44, such evidence (with reference to the Thames) was admitted. See also *The Andalusian* (1878), 2 P. D. 231, as to proof of usual precautions at a launch in the Mersey. It seems that the Court will take the opinion of the assessors upon such points: *The Cambria*, Ad. Div. May, 1887.

(*d*) *The Gannet*, (1900) App. Cas. 204.

(*e*) *The City of Berlin*, (1908) P. 110. As to the practice in taking the opinion of the assessors and the character of the questions

asked, see *The New Pelton*, (1891) P. 258; *The River Derwent* (1891), 7 Asp. M. C. 467.

(*f*) See *The Magna Charta* (1872), 1 Asp. M. C. 153; *The Aid* (1881), 6 P. D. 84; *The Beryl* (1884), 9 P. D. 137, 141; *The Swanland* (1855), 2 Sp. 107; *The Fred* (1894), 7 Asp. M. C. 550.

(*g*) "It would be impertinent in a judge not to consider as almost binding upon him the opinion of the nautical gentlemen who, having ten times his own skill, are called in to assist him." *Per Brett, M. R.*, *The Beryl* (1884), 9 P. D. 137, 141; and see *The Alfred* (1849), 7 Not. of Cas. 352, 354; *The Gannet*, (1900) App. Cas. 234.

(*h*) See *The Falkland* (1864), Br. & L. 204.

(*i*) *The Magna Charta* (1872), 1 Asp. M. C. 153; *The Friends' Goodwill* and *The Peggy* (1785), Mars. Ad. Cas. 328.

ralty registrar to deliver to the appellants a copy of those reasons (*k*).

A plaintiff who has been unsuccessful in an action at law tried upon the merits (*l*), or who has received payment of the sum for which he obtained judgment (*m*), cannot afterwards proceed against the ship in Admiralty for the same collision; nor would he be allowed to sue at law and in Admiralty at the same time for the same collision (*n*).

Plaintiff unsuccessful at law, or whose judgment is satisfied, cannot afterwards sue in Admiralty.

He cannot sue at law and in Admiralty at same time.

Consolidation of actions : cross actions.

In order to avoid multiplicity of actions, where the owners of two ships that had been in collision institute separate or cross actions against each other, the Court will consolidate the two actions (*o*), the litigant whose writ is first issued having the conduct, in other words the position of plaintiff.

Consolidation : actions by different plaintiffs against the same defendant.

Actions by different plaintiffs in respect of the same collision against the same ship or the same defendants may be consolidated in Admiralty, even as against an unwilling defendant, or at the instance of the defendant as against an unwilling plaintiff (*p*). And where two ships belonging to the same owners, one being disabled and in tow of the other, fouled a third ship, several actions by the owners and by the master and crew of the third ship against the two ships that fouled her were consolidated (*q*).

This practice of consolidating actions, which appears to have been peculiar to the Court of Admiralty, has been continued since the Judicature Acts by the Admiralty Division (*r*). If actions are brought both by the owners of a ship, and by the owners of the cargo, the usual practice is to order a stay of the cargo action until after the decision in the ship action.

(*k*) *The Banshee* (1889), 6 Asp. M. C. 130.

(*l*) See *The Griefswald* (1857), Swab. 430, 435.

(*m*) *The Orient* (1871), L. R. 3 P. C. 696.

(*n*) *The John and Mary* (1857), Swab. 471. In this respect the rights of a person entitled to a maritime lien differ from those of a mortgagee, who may pursue all his remedies at once.

(*o*) Judicature Act, 1873, s. 24, sub-s. 7. See *Thomson v. S. E. Rail. Co.* (1881), 9 Q. B. D. 320. So the Admiralty Court Act, 1861

(24 & 25 Vict. c. 10), s. 34, gave the Admiralty Court the same power.

(*p*) *The William Hutt* (1860), Lush. 25; *The Melpomene* (1873), L. R. 4 A. & E. 129; *The Falk* (1881), 4 Asp. M. C. 592; *The Cumberland* (1862), 5 L. T. 496.

(*q*) *The American and The Syria* (1874), L. R. 4 A. & E. 226.

(*r*) *E.g., The Hector* (1883), 8 P. D. 218. As to the effect of 24 & 25 Vict. c. 10, s. 34, see *The Demetrius* (1872), L. R. 3 A. & E. 523.

Where the actions are *in personam* and in one of them service of the writ has not been effected, consolidation will not be ordered (*s*).

Although it has the power to force consolidation upon unwilling parties, the present practice of the Admiralty Division is not to exercise that power (*t*); but a plaintiff who unreasonably objected to consolidation and afterwards succeeded in his action has been ordered to bear the costs occasioned by his objecting to consolidation (*u*).

The power of consolidating actions above referred to is wider than the general power given by Ord. XLIX. r. 8, although that power is exerciseable by a plaintiff as well as by a defendant (*x*). The practice adopted in other Divisions of trying one of several actions by different plaintiffs against the same defendants as a test action (*y*) does not appear to have been ever in use in Admiralty.

Plaintiff lying
by to await
judgment in
other action.

Where the rights and liabilities of the parties can be fairly settled in the usual way upon claim and counterclaim, a party who, before bringing his action, awaits the decision of an action in respect of the same collision in which he is defendant, does so at the risk of having to pay costs (*z*).

Cross actions:
one ship
arrested, the
other not:
stay of pro-
ceedings.

Where there are cross actions or action and counterclaim, and the defendant ship in the principal action is arrested, if the plaintiff ship has been lost or for some other reason cannot be arrested, her owner may be compelled to give security for the amount claimed against him in the cross action (*a*), or counterclaim (*b*). This rule has been applied

(*s*) *The Helenslea* (1882), 7 P. D. 57.

(*t*) *The Jacob Landstrom* (1879), 4 P. D. 191; *The Vidosala* (1881), 4 Asp. M. C. 228; *The Pasithea* (1880), 5 P. D. 5; *The William Hutt*, *ubi supra*.

(*u*) *The Lord Strathnairn* (1875), cited Williams & Bruce, 3rd ed. 392; and see *The Nicolina* (1844), 2 W. Rob. 175; *The Bartley* (1857), Swab. 198.

(*x*) *Martin v. Martin & Co.*, (1897) 1 Q. B. 429. As to substituting a plaintiff after decree, but before assessment of damages, see *The Duke of Buccleugh*, (1892) P. 201.

(*y*) See *Amos v. Chadwick*

(1877), 4 Ch. D. 869; *Bennett v. Lord Bury* (1880), 5 C. P. D. 339.

(*z*) *The Calypso* (1857), Swab. 28; *The Breadalbane* (1882), 7 P. D. 186; *The Julia Fisher* (1877), 2 P. D. 115.

(*a*) The Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 34; *The Charkieh* (1874), L. R. 4 A. & E. 120.

(*b*) *The Breadalbane* (1882), 7 P. D. 186; *The Julia Fisher* (1877), 2 P. D. 115; *The Newbattle* (1885), 10 P. D. 33. Cf. *The Carnarvon Castle* (1876), 3 Asp. M. C. 607, and *disting. The Alne Holme* (2nd action) (1881), 4 Asp. M. C. 592.

where the parties are foreigners resident abroad (*c*), against a British subject resident in England (*d*), and against a foreign sovereign whose ship was privileged from arrest (*e*). The Act, which enables the Court to stay proceedings in this case applies only to actions *in rem*, and has no application where the principal action is one *in personam* (*f*).

Where actions in respect of the same collision are pending in the Admiralty Division and in a County Court at the same time, the practice is for the former Court upon application in that behalf being made to it under the County Courts (Admiralty Jurisdiction) Act, 1867 (*g*), s. 6, to order that the County Court action be transferred to the Admiralty Division. The conduct of the consolidated action will usually be given to the plaintiff in the action which was first instituted (*h*), if there is a clear priority in time (*i*).

Cross actions: one in County Court, the other in Supreme Court: transfer of County Court action.

Damage to ship or goods and injury to person may be sued for in separate actions though the damage and injury were caused by the same negligent act, in the same collision, at the same time, and to the same person (*k*).

Separate actions for damage to property, and injury to person.

It has been held by the Court of Appeal that the High Court of Admiralty had no jurisdiction to entertain an action *in personam* against a pilot for a collision caused by his fault; and that a County Court has no power to entertain such an action in Admiralty (*l*).

Action against pilot.

The Public Authorities Protection Act, 1893, limiting the period to six months after the default complained of, during which an action may be brought, does not apply to an action *in rem* (*m*), nor does 6 & 7 Will. 4, c. 100 (local and personal), s. 8, by which no action in any of His Majesty's Courts of Law shall be brought against the Dublin Steam

Public Authorities Protection Act.

(*c*) *The Charkieh*, *ubi supra*; *The Julia Fisher*, *ubi supra*.

(*d*) *The Cameo* (1862), Lush. 408.

(*e*) *The Newbattle* (1885), 10 P. D. 33.

(*f*) *The Rougemont*, (1893) P. 275; *The James Westoll*, (1905) P. 47; 10 Asp. 29.

(*g*) 31 & 32 Vict. c. 71.

(*h*) *The Never Despair* (1884), 9 P. D. 34; *The Immacolata Concezione* (1883), 8 P. D. 34. See also *The Cosmopolitan* (1874), 9 P. D. 35, note; *The Bjorn* (1882), *ibid.* 36, note.

(*i*) *The Mersey*, (1901) P. 369.

(*k*) *Brunsdon v. Humphrey* (1883), 11 Q. B. D. 712; 14 Q. B. D. 141.

(*l*) *Reg. v. Judge of City of London Court*, (1892) 1 Q. B. 273, following *The Urania* (1862), 5 L. T. 402; *The Alexandria*, L. R. (1871) 3 A. & E. 574; *Flower v. Bradley* (1875), 44 L. J. Ex. 1; *The Bowesfield* (1886), 5 Asp. M. C. 265; *The Germanic*, (1896) P. 84, where the Court refused to add a pilot as party in an action *in rem*.

(*m*) *The Burns*, (1907) P. 137.

Packet Company, unless a month's notice in writing shall have been given to the company (*n*).

Action at law supplemented by proceedings *in rem* and *vice versa*.

Where proceedings had been taken *in rem* in Admiralty, and the amount realized by the sale of the ship was not sufficient to recompense the plaintiff, it was held, previously to the Judicature Acts, that he could bring his action at law for the residue of the loss (*o*). An action may be brought *in rem* for damages, which owing to the insolvency of the defendant, could not be recovered at law (*p*).

Recovery in an action *in rem* of damages in excess of the *res* or bail.

It is now settled that the judgment in an action *in rem* is a personal judgment against the defendant for the full amount awarded, and no limitation is placed on the liability of the defendant by the value of the *res*. In a salvage action (*q*) *in rem* the writ was indorsed with a claim for 5,000*l*. The owners of the salvaged ship and cargo gave an undertaking to put in bail for 5,000*l*., and the ship and cargo were not arrested. The Court awarded for salvage 7,500*l*. The plaintiffs subsequently obtained leave (*r*) to amend the indorsement on the writ by altering the sum to 8,500*l*. The defendants paid 5,000*l*. and costs, but denied further liability. Upon a motion, which was, by consent, treated as an application for leave to issue execution for the balance of the 7,500*l*. against the owners, it was held that the owners were personally liable for the balance and were entitled to writs of *fieri facias* against their goods. Previously to this decision there had been great doubt and conflicting decisions as to the personal liability of shipowner or shipmaster for damages in a collision action, where the action was *in rem*, and the damages exceeded the value of the *res* or bail. Dr. Lushington had, in several cases (*s*), expressed

(*n*) *The Longford* (1886), 14 P. D. 34, following *The Mullingar* (1872), 1 Asp. M. C. 252.

(*o*) *Nelson v. Couch* (1864), 15 C. B. N. S. 99; *The Bold Buccleugh* (1851), 7 Moo. P. C. 267; *The Orient* (1871), L. R. 3 P. C. 696, 702; *The Pet* (1869), 20 L. T. 961; *The Zephyr* (1865), 11 L. T. 351. See also *The Sylph* (1867), L. R. 2 A. & E. 24.

(*p*) *The John and Mary* (1859), Swab. 471; *The Bengal*, *ibid.* 468; *The Demetrius* (1872), 41 L. J. Ad. 69; *The Sylph* (1867), L. R. 2 A. & E. 24; *The Cella* (1888),

13 P. D. 82.

(*q*) *The Dictator* (No. 1), (1892) P. 64. Followed in collision actions: *The Gemma*, (1899) P. 285; *The Duplex*, (1912) P. 8.

(*r*) *The Dictator* (No. 2), (1892) P. 304.

(*s*) *The Hope* (1840), 1 W. Rob. 154; *The Kalamazoo* (1851), 15 Jur. 885; *The Victor* (1860), Lush. 72; *The Volant* (1842), 1 W. Rob. 383; *The Zephyr* (1865), 11 L. T. 351. Before the present century the master was generally a defendant in a suit *in rem* against the ship.

the opinion that a personal action could not be "engrafted on" an action *in rem*; although in one (*t*) of these cases he appears to have been willing, in an action *in rem*, to monish the shipowners to pay damages not covered by the bail bond. On the other hand, Lord Stowell, in *The Dundee* (*u*), was clearly of opinion that the shipowner was liable in an action *in rem*, beyond the value of the *res*, to the full amount of the damages awarded. The judgment of Sir Francis Jeune, P., in *The Dictator*, No. 2, contains a full and luminous examination of the nature of the action *in rem*, and completely sets at rest the question at issue.

Where the shipowner appeared and defended the action, it was held that he could, by re-arrest of the ship, be compelled to pay costs (*x*), beyond the value of the ship and freight and the amount of his bail bond.

Re-arrest of ship to secure costs.

Where the solicitors for the owners of the ship sued accepted service of the writ and undertook to put in bail, but before doing so their authority was withdrawn, it was held that they were not liable to attachment for contempt in not fulfilling their undertaking (*y*).

Failure to put in bail, after undertaking.

When the plaintiffs in a collision action have demanded excessive bail, they have been ordered on the application of the defendants to pay the fees in respect of the bail in excess of the proper amount of bail that should have been demanded (*z*).

Demand for excessive bail.

It has occurred in some cases that the plaintiff has failed to identify the ship sued with the ship with which his own has been in collision. So where, in consequence of a collision between A. and B., a third ship, C., is injured, C. may be in a difficulty as to which ship to sue. It seems that if the wrong ship is arrested, she would, except in special circumstances, be entitled to costs, and, in flagrant cases, to damages and costs (*a*), or to her expense of procuring bail (*b*). In the

Arrest of wrong ship.

(*t*) *The Zephyr*, *ubi supra*.

(*u*) (1823), 1 Hag. 109.

(*x*) *The John Dunn* (1840), 1 W. Rob. 159; *The Freedom* (1871), L. R. 3 A. & E. 495. See also *The Volant* (1842), 1 W. Rob. 383; *The Temiscouata* (1855), 2 Sp. 208.

(*y*) *The Anna and Bertha* (1891), 7 Asp. M. C. 31.

(*z*) *The Princess Marie José*

(1913), 12 Asp. M. C. 360.

(*a*) *The Evangelismos* (1857), Swab. 378; 12 Moo. P. C. 352; *The Active* (1862), 5 L. T. 773; *The Strathnaver* (1876), 1 App. Cas. 58; *The Cheshire Witch* (1864), Br. & L. 362; *The Cath-*

(*b*) *The Collingrove* (1885), 10 P. D. 158.

absence, however, of malice and gross negligence on the part of the plaintiff, damages, and even costs, have not in all cases been given to the ship wrongly arrested (c). To entitle the plaintiff in an action for wrongful arrest to damages, it is not necessary to prove actual damage, if the arrest was without reasonable cause (d).

Arrest after
undertaking
to give bail.

If a ship is arrested without reasonable cause, as where the owners' solicitors sign an undertaking to give bail, and no objection or inquiry is made as to the sufficiency of the undertaking, the plaintiffs will be condemned in damages and costs (e).

Arrest of
Government
ships.

A King's ship cannot be arrested (f), nor can a ship belonging to a foreign state (g), for no action lies. A ship belonging to private owners in the service of the Crown (h) or in the service of a foreign state by requisition cannot be arrested while in government service, though an action lies against the owners of the ship (i).

Damages for
loss of life
and personal
injury, action
in rem.

Before the Maritime Conventions Act, 1911, no action could be brought *in rem* for loss of life under Lord Campbell's Act. The conflict of authority (k) which existed for many years upon this point was set at rest by the decision of the House of Lords in *The Vera Cruz* (No. 2) (l). Now by sect. 5 of the above Act actions for damages for loss of life or personal injury can be brought *in rem* in any Court which has Admiralty jurisdiction in respect of other damage caused

cart (1866), L. R. 1 A. & E. 314, 333; *The Volant* (1864), Br. & L. 321; *The Glasgow* (1857), Swab. 145; *The Victor* (1860), Lush. 72; *The Egerateia* (1869), 38 L. J. Ad. 40.

(c) *The Evangelismos* (1857), Swab. 378; *The Strathnaver* (1875), 1 App. Cas. 58.

(d) *The Walter D. Wallet*, (1893) P. 202.

(e) *The Crimdon*, (1900) P. 171.

(f) *The Athol* (1842), 1 W. Rob. 374; *The Comus* (1816), 2 Doda. 464.

(g) *The Parlement Belge* (1880), 5 P. D. 197.

(h) *The Broadmayne*, (1916) P. 64.

(i) *The Messicano* (1916), 32 T. L. R. 519.

(k) See *The Sylph* (1867), L. R.

2 A. & E. 24; *The Guldfaxe*, *ibid.* 325; *The Beta* (1868), L. R. 2 P. C. 447; *The Borodino* (1862), 5 L. T. 291; and *contra*, *Smith v. Brown* (1871), L. R. 6 Q. B. 729; *Simpson v. Blues* (1872), L. R. 7 C. P. 290. In *The Franconia* (1877), 2 P. D. 163, the Court of Appeal was equally divided. See also *Taylor v. Dewar* (1864), 5 B. & S. 58, and the observations of Sir R. Phillimore on that case, L. R. 2 A. & E. 329.

(l) (1885), 10 App. Cas. 59. See also *The Circe*, (1906) P. 1. The law in Canada seems to be the same. See *Monaghan v. Horn*, *The Garland*, 7 Duval's Sup. Ct. Rep. Canada, 409; 40 Vict. c. 21 (Canada); 26 & 27 Vict. c. 10 (Vice-Ad. Ct. Act), ss. 7, 13.

by the events, which gave rise to the claim for loss of life (*m*). The owner of a ship partly at fault for a collision, who has paid damages for loss of life or personal injury caused by the collision, can recover contribution from the owner of the other ship in fault in an action *in rem* (*n*), but it is doubtful if he could recover sums paid under the Workmen's Compensation Act, 1906 (*o*). Such sums are, it is submitted, not damages, for the award of compensation being made independently of any question of negligence, the amount is in the nature of an indemnity rather than of damages (*p*).

Where the defendant, in a collision action, claims to be entitled to recover from a third party the damages for which judgment may be given against him, attempts have been made to bring into the action such third party under Ord. XVI. rr. 48 *et seq.* of the Rules of the Supreme Court. Thus, a ship in tow sued by a ship at anchor which she had fouled, sought to bring in the tug-owners as third parties, against whom they were entitled to indemnity (*q*). The judge refused to entertain the question of the liability of the tug-owners. The rules in question apply only where the right to contribution or indemnity is founded upon contract, express or implied; they do not apply where the right of the defendant is to recover against a person, not a party to the principal action, damages to the same amount as the damages awarded in the action (*r*). It would seem from the wording of the section that a claim for contribution under sect. 3 of the Maritime

Third party
procedure.

(*m*) This would appear to be the effect of the section, and an action *in rem* is probably not maintainable in a County Court for loss of life arising from a collision within the body of a county between "vessels" which are not "ships," *e.g.*, dumb barges. For the limits of County Court jurisdiction in Admiralty, see *infra*, p. 288. *

(*n*) Maritime Conventions Act, 1911, s. 3.

(*o*) 6 Edw. 7, c. 58. Damages and compensation are treated as different remedies in the Act: see sect. 1 (4).

(*p*) Cf. *The Circe*, (1906) P. 1. In *The Annie*, (1909) P. 176, it was held that the amount paid could be recovered by way of damages in an action *in personam*,

in Admiralty in a case where the defendant was alone to blame. In *Cory & Son, Ltd. v. France, Fenwick & Co., Ltd.*, (1911) 1 K. B. 114, it was held that a claim under sect. 6 of the Act could not be maintained against the defendants who were jointly with the plaintiffs to blame for the injury. See also *The Rigel*, (1912) P. 99, *supra*, p. 116.

(*q*) *The Bianca* (1883), 8 P. D. 91. See also *The Carlsburn* (1880), 5 P. D. 35.

(*r*) *The Jacob Christensen* (1895), 8 Asp. M. C. 21; *Speller v. Bristol Steam Navigation Co.* (1884), 13 Q. B. D. 96; *Carshore v. North Eastern Rail. Co.* (1885), 29 Ch. D. 344.

Conventions Act, 1911, might be enforced under the third party procedure.

Joinder of co-defendants.

Where there is a reasonable doubt as to who is liable, as in the case of collision with a tug or tow, or where the ship sued may have been acting under the orders of a dock authority, the tug and tow, or the ship and dock owners, may be joined as co-defendants (s).

Actions for limitation of liability.

By the Merchant Shipping Act, 1894, s. 504 (t), jurisdiction is given to the High Court (u), in proceedings by a shipowner to limit his liability under the Act, to determine the amount of such liability, and to distribute the sum representing the amount of such liability amongst the several claimants; and further, to stay actions pending in respect of the collision.

The benefit of the enactment limiting the shipowner's liability is ordinarily obtained by instituting an action in which the plaintiff claims a declaration by the Court to the effect that the plaintiff and his vessel are not answerable in damages to an amount exceeding, as the case may be, 8*l.* or 15*l.* per ton of the ship's tonnage. Upon payment into Court of the 8*l.* per ton and interest at 4*l.* per cent. from the date of the collision; and in case of loss of life or personal injury, upon payment into Court, or bail being given, for the additional amount up to 15*l.* per ton, or such smaller sum as the Court specifies; and upon payment into Court also of the costs of actions already instituted against the plaintiff in respect of the collision, the Court will make the declaration claimed, and thereupon all actions in respect of the collision for loss of life or injury to ship, cargo, or persons on board, will be stayed (x).

Limited liability may

The benefit of the statutory limitation of liability may also

(s) *The River Lagan* (1886), 6 Asp. M. C. 281; *The Mystery*, (1902) P. 115.

(t) The previous enactments on the subject were 17 & 18 Vict. c. 104, s. 514, and 53 Geo. 3, c. 159, s. 7. See Chap. VII., *supra*, p. 170.

(u) By R. S. O. (Merchant Shipping), 1894, r. 1, this jurisdiction is assigned to the Admiralty Division. Sect. 13 of the Admiralty Court Act, 1861, and the decisions thereon,

James v. L. & S. W. Rail. Co. (1872), L. R. 7 Ex. 187, 287; *The Northumbria* (1869), L. R. 3 A. & E. 24; *The Foscolino* (1886), 5 Asp. M. C. 420, seem to be obsolete. The above rule reproduces the provisions of the Judicature Act, 1873, and the Common Law Procedure Act, 1860.

(x) For details of practice in these actions, see Williams & Bruce, Ad. Pr. 3rd ed. pp. 377 *seq.*

be claimed by way of defence or counterclaim in the collision action (*y*).

be claimed in defence.

The plaintiff, in an action for limitation of liability, is required to pay the costs of the action, other than costs occasioned by disputes between rival claimants to the fund, and also the costs of actions stayed at his request (*z*). Where the defendant raises and fails upon special issues, he will have to bear the costs of such issues (*a*).

Costs of limitation action.

The practice of the Admiralty Division in actions for limitation of liability, where no special defence is raised, is for the evidence to be taken by affidavit.

Evidence in limitation actions by affidavit.

There was formerly doubt as to whether, in an action for limitation of liability, the plaintiff must admit that his vessel was in fault (*b*). By the present practice of the Admiralty Division it appears that such an admission is not necessary (*c*), though it is usual.

Admission of liability.

An agreement between the shipowners that both ships, A. and B., were in fault for the collision does not prevent the owner of cargo on board one of them, B., from alleging, in an action by the owner of the other, A., to limit his liability, that A. was alone in fault; and he is entitled to an issue to decide that question (*d*).

Cargo-owner may in limitation action raise question whether one or both ships in fault.

After the expiration of the time (usually three months) specified in advertisements issued by the Court in a limitation action for the bringing in of claims for loss of life, an unappropriated balance of the sum paid into Court, which remained after payment of all claims which had been successfully prosecuted, was ordered to be paid to the plaintiffs in the limitation action, although all the possible claims had not

Payment out of Court of unappropriated balance.

(*y*) See *The Clutha* (1876), 45 L. J. Ad. 108; *Wahlberg v. Young* (1876), 45 L. J. C. P. 783; *The Sisters* (1876), 1 P. D. 281. But see *James v. L. & S. W. Rail. Co.*, *infra*.

(*z*) *African Steamship Co. v. Swanzy* (1855), 2 K. & J. 660; *The Empusa* (1880), 5 P. D. 6.

(*a*) *The Empusa* (1880), 5 P. D. 6; *The Warkworth* (1884), 9 P. D. 20, 145.

(*b*) *The Amalia* (1864), Br. & L. 151; *Hill v. Andus* (1854), 1 K. & J. 263; *James v. L. & S. W. Rail. Co.* (1872), L. R. 7 Ex. 187; *ibid.* 287; *Miller v. Powell* (1875),

2 Ct. of Sess. Cas. 4th ser. 976. In *Hill v. Andus* the bill was not dismissed for want of jurisdiction, but the injunction to restrain a particular action was refused. See *per* Willes and Blackburn, JJ. (1872), L. R. 7 Ex. 291, 295.

(*c*) *The Sisters* (1875), 2 Asp. M. C. 589. And see *The Amalia* (1864), Br. & L. 151. The latter decision was, however, doubted in *The Karo* (1888), 13 P. D. 24, at p. 29. See the report of the case in 6 Asp. M. C. at p. 247.

(*d*) *The Karo* (1888), 13 P. D. 24.

been brought in, and the year within which under Lord Campbell's Act claims could be made, had not expired (e).

Transfer of action from King's Bench to Admiralty Division, after judgment limiting liability.

Proof against the fund: estoppel.

Where the owners of a ship found alone to blame for a collision had obtained in the Admiralty Division a judgment limiting their liability, an action pending in the Queen's Bench Division for damages for personal injuries sustained in the collision was transferred to the Admiralty Division (f).

In an action (A) and counterclaim for a collision between *The Bellocairn* and *Britannia*, a judgment by consent was made dismissing action and counterclaim. Subsequently owners of cargo on board *The Britannia* brought their action (B) against *The Bellocairn*. In this action both ships were found to be in fault. *The Britannia* owners then instituted an action (C) for limitation of their liability, and obtained the usual judgment. Thereupon the owners of *The Bellocairn*, having, with the consent of *The Britannia* owners, induced the assistant registrar to rescind the judgment by consent in action (A), sought to claim for damage to *The Bellocairn* against the fund paid into Court in the limitation action (C) in competition with the cargo-owners. It was held that the rescission of the judgment in action (A) was *ultra vires*, that *The Bellocairn* owners were estopped from bringing any further action against *The Britannia*, and that they could not claim against the fund in Court (g). But the case is different where the agreement entered into as to the first action (A) results in a discontinuance of that action. In such a case one of the parties is not estopped from asserting a claim against a fund paid into Court in a limitation action by the other party (h).

Successive actions by cargo-owner and ship-owner; no stay of proceedings.

Where cargo-owners had recovered judgment against the other ship, and the owners of the carrying ship, after judgment in the cargo-owners' action, brought their action against the other ship, and the damages in the two actions exceeded the statutory amount of the shipowners' liability, whilst the damages in the cargo-owners' action did not exceed that amount, the Court refused to stay proceedings in the

(e) *The Alma*, (1903) P. 55.

(f) *Hawkins v. Morgan* (1880), 49 L. J. Q. B. 618.

(g) *The Bellocairn* (1885), 10 P. D. 161.

(h) *The Ardandhu, Owners of the Cargo of the Kronprinz v. Owners of the Kronprinz* (1886), 11 P. D. 40; 12 App. Cas. 256.

cargo-owners' action until judgment was delivered in the shipowners' action (*i*). The object of the plaintiff in the second action was to share *pari passu* with the cargo-owners in the fund to which the shipowners' liability was limited.

It is the practice in Admiralty to refer all questions as to the amount of damages to the registrar, assisted by merchants (*k*); but where the question is raised by the pleadings, it is in the discretion of the Court to decide at the hearing of the action whether a particular item of loss arising after the collision is recoverable as damages in the action.

Damages assessed by registrar and merchants : question of consequential damages may be decided at the hearing.

In exercising its discretion, the Court will be guided by the consideration whether the matter is one which can be dealt with better by the Court and its nautical assessors at the hearing, than later by the registrar and a Trinity Master; who now frequently attends references (*l*).

Where an action under Lord Campbell's Act for damages was instituted in the Admiralty Division, and no application for a transfer of the action to the Queen's Bench Division having been made, judgment was given for the plaintiffs upon default of pleading by the defendants, it was held, by Sir J. Hannen, that the plaintiffs were entitled to have the amount of the damages assessed by a jury in accordance with the terms of Lord Campbell's Act (*m*). A similar order made in an action *in rem* was held within the discretion of the judge (*n*).

Lord Campbell's Act : assessment of damages by jury.

Where a part-owner, without the knowledge of his co-owner, executed a bond to obtain the release of his ship from arrest in a damage action, and subsequently became bankrupt, it was held that a surety who had been compelled to pay the amount of the bond could recover against the co-owner (*o*).

Surety in Admiralty bond may recover against co-owner.

The master of a vessel which, by the master's fault, had been in collision with another in a foreign port, in order to prevent her arrest, and in the interest of her owners, gave a bond in the names of himself and the shipowners to cover the

Master's liability on bond to prevent arrest of ship abroad.

(*i*) *The Alne Holme* (first action) (1881), 4 Asp. M. C. 593.

(*k*) This is the practice in actions for damage to cargo under the Admiralty Court Act, 1861 (24 Vict. c. 10), s. 6, as well as in damage actions: *The St. Cloud* (1864), Br. & L. 4.

(*l*) *The Maid of Kent* (1881), 6 P. D. 178.

(*m*) *The Orwell* (1888), 13 P. D. 80.

(*n*) *The Kwasind* (1915), 84 L. J. P. 102.

(*o*) *Barker v. Highley* (1863), 15 C. B. N. S. 27.

damage to the other ship. In an action by the master against the ship for wages and disbursements, he claimed the amount of the penalty of the bond, and also the sum paid by him for repairs to his ship rendered necessary by the collision. It was held that he was not entitled, as against mortgagees of the ship, to have paid into Court the amount of the penalty of the bond so as to meet claims against him in respect thereof (*p*).

Ship not
arrested;
judgment by
default.

Where in an action *in rem* the writ was duly served within the jurisdiction, but before service of the warrant to arrest the ship was taken out of the jurisdiction, it was held that judgment could, nevertheless, go against the ship (*q*).

Collisions
abroad, and
between
foreign ships.

The jurisdiction of the Courts of this country in respect of collisions on the high seas, and in the territorial waters of foreign countries, and also where one or both the ships are foreign, is considered in a former chapter (*r*).

Admiralty
jurisdiction of
High Court
of Justice.

The Admiralty jurisdiction of the High Court of Justice is co-extensive, geographically, with that of the late High Court of Admiralty; the jurisdiction of the latter Court having, by the Judicature Act, 1873, been transferred to the High Court of Justice (*s*). The jurisdiction of the Court of Admiralty extended to every sort of collision and damage to property occurring upon the high seas (*t*), and upon tidal waters not within the body of a county (*u*). By the Admiralty Court Act, 1840 (*x*), s. 6, its jurisdiction was extended to (amongst other things) claims for damage received by "any ship or sea-going vessel" within the body of a county; and by the Admiralty Court Act, 1861 (*y*), ss. 2, 7, it was further extended to claims for damage done by "any description of vessel used in navigation not propelled by oars." It appears that these statutes covered every case of collision between craft of all sorts, except a collision within the body of a county between lighters or other craft both of which are propelled by oars only. Thus, it was held that where the collision was within the body of a county, and the damage was done by a steamship to a barge, the case was covered by

(*p*) *The Limerick* (1876), 1 P. D. 411; reversing, 1 P. D. 292.

(*q*) *The Nautik*, (1895) P. 121.

(*r*) *Supra*, pp. 220 *seq.*

(*s*) 36 & 37 Vict. c. 66, s. 16.

(*t*) *The Sarah* (1862), Lush.

549; approved *The Zeta*, (1893) App. Cas. 468, 480.

(*u*) 13 Ric. 2, st. 1, c. 5; 15 Ric. 2, c. 3.

(*x*) 3 & 4 Vict. c. 65.

(*y*) 24 & 25 Vict. c. 10.

the Admiralty Court Act, 1861, s. 7 (z); and where the collision was within the body of a county, and the damage was done by a barge to a steamship, the case was covered by the Admiralty Court Act, 1840, s. 6 (a). But where the collision was within the body of a county, and the damage was done by one Thames lighter (propelled by oars only) to another similar craft, the Admiralty Court had no jurisdiction (b). Consequently, in the last-mentioned case, it seems that though the Admiralty Division has jurisdiction as a Division of the High Court of Justice, there is no damage lien, an action *in rem* cannot be maintained and the common law rule as to the results of contributory negligence applies when one of the craft is not a "vessel used in navigation" (c). But since the Maritime Conventions Act, 1911, came into operation, if both craft were "vessels" within the definition in the Merchant Shipping Act, 1894, the damage or loss will be apportioned in cases in which both are in fault (cc). The Acts above mentioned gave the Admiralty Court jurisdiction in the case of damage by any craft not propelled by oars to a floating landing-stage within a county (d), to oysters on an oyster-ground (e), and also to any sort of craft or other property afloat or ashore, whether by collision with other craft or not (f), but in the case of damage to craft within a county the Admiralty jurisdiction is limited to damage to "ships or sea-going vessels." In a recent case it was held that an action for damage to a "ship" by a nondescript floating craft not a "vessel used in navigation" was a common law action brought in the Admiralty Division (g).

(z) *The Malvina* (1863), Lush. 493; Br. & L. 57. This case was not within 3 & 4 Vict. c. 65, s. 6; *The Bilbao* (1860), Lush. 149.

(a) *Purkis v. Flower* (1874), L. R. 9 Q. B. 114.

(b) *Everard v. Kendall* (1870), L. R. 5 C. P. 428.

(c) *The Blow Boat*, (1912) P. 217 (contributory negligence).

(cc) See pp. 143 *seq.*, *supra*.

(d) *The Veritas*, (1901) P. 304.

(e) *The Swift*, (1901) P. 168.

As to damage to oysters improperly laid, see *Petrie v. Owners of The Rostrevor* (1898), 2 Ir. 556.

(f) *The Zeta*, (1893) App. Cas. 468 (collision with pier head).

(g) *The Blow Boat*, (1912) P. 217; *sed quare*, though it is submitted that the actual point decided, viz., that the Admiralty rule of division of loss did not apply to such a collision, is correct on other grounds, see *The Zeta*, (1893) App. Cas. 468, 491. For the meaning of "ship" in sect. 742 of the Merchant Shipping Act, 1894, see *The Mac*, 7 P. D. 38; on app. *ibid.* p. 126, followed *The Mudlark*, (1911) P. 116 (a hopper barge is a "ship"); and elsewhere in the

Admiralty
jurisdiction of
County
Courts.

Certain County Courts have Admiralty jurisdiction in cases of damage by collision (*h*). By the County Courts Admiralty Jurisdiction Act, 1868, s. 3 (*i*), these Courts have jurisdiction as to any claim for damage by "collision" not exceeding 300*l.*, and that section is amended by the County Courts Admiralty Jurisdiction Act, 1869, s. 4 (*k*), which enacts that the section is "to extend and apply to all claims for damage to ships whether by collision or otherwise." "Collision" in the earlier Act has been held to mean collision between ships only, so that in cases of damage inflicted *by* a ship to a pier, or a buoy, or anything else not a "ship," the Court has no jurisdiction in Admiralty (*l*), but in cases where damage is caused *to* a ship by her striking similar objects the Court has jurisdiction (*m*).

Admiralty
jurisdiction
in other
Courts.

Admiralty jurisdiction is also possessed by the Court of Admiralty of the Cinque Ports within the boundaries of the Cinque Ports (*n*), and by the Court of Passage of the Borough of Liverpool in a district co-terminous with that of the County Court of Lancashire at Liverpool (*o*).

same Act, *The C. S. Butler* (1874), L. R. 4 A. & E. 238; *Ex parte Ferguson* (1871), L. R. 6 Q. B. 280; of "vessel" in the Harbour Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 3, see *Hedges v. London and St. Katharine's Docks Co.* (1886), 16 Q. B. D. 597.

(*h*) For a list of the County Courts having Admiralty jurisdiction, and of the limits of their districts, see the County Courts Admiralty Jurisdiction Order in Council, 1899.

(*i*) 31 & 32 Vict. c. 71.

(*k*) 32 & 33 Vict. c. 51.

(*l*) *The Normandy*, (1904) P. 187, where all the earlier cases are considered; followed in *The Upcerne*, (1912) P. 160.

(*m*) *The Zeta*, (1893) App. Cas. 468 (collision with a pier head). For information as to the practice, see Admiralty Jurisdiction and

Practice of County Courts, by Raikes and Kilburn.

(*n*) See *The Lord Warden and Admiral of the Cinque Ports v. The King in his Office of Admiralty* (1831), 2 Hag. Adm. 438; Cinque Ports Act, 1831 (1 & 2 Geo. 4, c. 76). Rules and orders regulating the procedure and practice of the Court were made in 1891, and are printed in Statutory Rules and Orders, 1896, p. 609.

(*o*) County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 25; County Courts Admiralty Jurisdiction Act, 1869 (32 & 33 Vict. c. 51), s. 6. Appeals are to a Divisional Court of the Admiralty Division: *The Dowse* (1870), L. R. 3 A. & E. 135; *The Ganges* (1880), 5 P. D. 247; *The Wild Rose* and *The J. M. Stubbs* (1915), 32 T. L. R. 164.

CHAPTER XIII.

COSTS.

Costs are in the discretion of the Court (*a*), but the general rule in a collision action, in which the owners of the two ships are plaintiff and defendant, is that costs follow the event of the action; that is to say, those of the successful party must be paid to him by the unsuccessful party, so far as they are allowed on taxation. Therefore, if the collision is found to have been caused by the fault of the defendant ship alone, the plaintiff is given the costs of the action; if his ship was alone in fault, or he fails to prove fault in the defendant ship, he will be condemned in costs. The practice of the Court, where there is a claim and counterclaim for damage arising out of the same collision, and both are dismissed, is that the claim be dismissed without costs and the counterclaim be dismissed with costs, that is such costs as are occasioned by the counterclaim (*aa*). But the rule, as has been said, is discretionary, and there is an instance of an unsuccessful plaintiff not being condemned in costs, although the only special circumstance was the difficulty of proof, owing to the collision having occurred in a dense fog (*b*).

General rule:
costs follow
event.

Where both ships were in fault, the practice was, under the old Admiralty rule of equal division of loss, that each party, whether the plaintiff sued as shipowner, cargo-owner, or otherwise (*c*), bore his own costs (*d*). This rule applied

Both ships
in fault.

(*a*) Ord. XLV. r. 1; as to the limit of this discretion, see *Re Mills' Estate* (1886), 34 Ch. D. 24.

(*aa*) *Per* Hill, J., *The Newholm* (1917), 86 L. J. P. 13.

(*b*) *The Sardinian*, Ad. Div. 9th Dec. 1886.

(*c*) *The City of Manchester* (1880), 5 P. D. 221; *The Vera Cruz* (1884), 9 P. D. 88.

(*d*) *The Washington* (1841), 5 Jur. 1087; *The Telegraph* (1853), 1 Sp. 427; *Wilson v. Canada Shipping Co., The Lake St. Clair and The Underwriter* (1876), 2 App. Cas. 389; *The Agra and The Elizabeth Jenkins* (1867), L. R. 1 P. C.

501; *The Lovebird* (1881), 6 P. D. 80. The rule formerly was that the costs of the action were divided, and one half borne by each party. The present practice is said to have been introduced by Lord Stowell (*per* Lord Blackburn, 7 App. Cas. 818; *sed vide* 1 W. Rob. 21), in order to avoid the cost of apportionment (*per* James, L. J., *The City of Manchester* (1880), 5 P. D. 221), or as part of the discipline of the seas, so that neither of two wrong-doing ships should gain anything by the litigation. (*Per* Brett, L. J., *The Hector* (1883), 8 P. D. 218, *sed qu.*)

whether there was or was not a counterclaim (*e*); also where the fault of one of the ships was the fault of her compulsory pilot (*f*). The same practice is maintained, in the absence of special circumstances, where it is found under the Maritime Conventions Act, 1911, that each vessel has been to blame, though in different degrees (*g*). Where a defendant, before statement of claim delivered, admitted that his vessel was in fault, and pleaded the admission in his statement of defence, and the Court found that both ships were in fault, the plaintiff was ordered to pay the costs incurred after the defendant's admission (*h*). And so, where the plaintiffs, in their statement of claim, admitted that they were to blame, but alleged that the defendants were also to blame, which the Court found to be the fact, the plaintiffs were held entitled to costs (*i*). In both these cases, therefore, the successful party on the issue before the Court obtained his costs.

Inevitable
accident.

It was formerly a rule (*k*) of the Admiralty Court that where the collision occurred without fault in either ship—the so-called case of inevitable accident—provided the plaintiff was not unduly rash in bringing his action (*l*), no costs were given on either side. In a case decided by Sir R. Phillimore since the Judicature Acts, where the collision was held to have occurred without fault in the defendant, no order was made as to costs. But this was an exceptional case, because a ground of the decision was that the defendant's ship had unavoidably a riding light exhibited, though she was not at anchor (*m*). Now, however, there is a general rule that, in the absence of special circumstances, costs should follow the event of the action in cases of collision by "inevitable accident," as in other cases (*n*).

Where the plaintiffs, in their reply, admitted that the

(*e*) *The Rigborgs Minde* (1883), 8 P. D. 132.

(*f*) *Ibid.*; *The Hector*, 8 P. D. 218.

(*g*) *The Bravo* (1914), 12 Asp. M. C. 311; *The Rosalia*, (1912) P. 109.

(*h*) *The Ebor* (1885), cited Williams & Bruce, 3rd ed. 98.

(*i*) *The General Gordon* (1887), 6 Asp. M. C. 533; reversed on the facts, Feb. 18th, 1891.

(*k*) *The Itinerant* (1844), 2 W. Rob. 236; *The London* (1864), Br. & L. 82, followed by the Privy Council in *The Marpesia* (1872), L. R. 4 P. C. 212.

(*l*) For an instance, see *The Thornley* (1842), 7 Jur. 659.

(*m*) *The Buckhurst* (1881), 6 P. D. 152.

(*n*) *The Monkseaton* (1889), 14 P. D. 51, followed in *The Batavier* (1890), 15 P. D. 37.

collision was an inevitable accident, the defendants, upon motion for judgment, obtained judgment with costs (o).

Where the plaintiff failed to identify the ship arrested as the ship with which his own had been in collision, the action was dismissed with costs (p). It seems that, to entitle the defendant in such a case to damages for the wrongful arrest of his ship, gross negligence, equivalent to malice, must be proved against the plaintiff (q).

Arrest of
wrong ship.

The decisions in Admiralty in which a successful defendant has been required to bear his own costs, so far as they conflict with the practice of the other Divisions of the High Court, would probably not now be followed (r).

The ship that succeeded in a collision action was in one case deprived of her right to costs by reason of the violence of her crew to those on board the other ship at the time of the collision (s); and in another case (before the statutory rule as to standing by was in force), a vessel was deprived of her costs by reason of her failure to stand by and assist the other ship (t).

Costs refused:
violence of
crew.

The owner of cargo who sues the ship with which the carrying ship has been in collision will not get his costs if he claims that the ship sued is alone in fault, and it is held that both ships are in fault (u). It has been said that the strict course in such a case is to give the plaintiffs the costs of the issue upon which they succeed, and to make them pay the costs of the issue on which they fail. But, to avoid the expense of such an apportionment, it was held in *The City of Manchester* that no order should be made as to costs (x).

Cargo-owner
claiming
defendant's
ship to be
alone in fault
where both
are in fault.

In an action by the owners of a barge against her tug and a

(o) *The Naples* (1886), 11 P. D. 124.

(p) *The Evangelismos* (1858), Swab. 378; 12 Moo. P. C. 352; *The Active* (1862), 5 L. T. 773; *The Strathnaver* (1876), 1 App. Cas. 58. See also *The Peri* (1863), 32 L. J. Ad. 46.

(q) See cases cited in last note, and p. 279, *supra*.

(r) *The General Steam Navigation Co. v. London & Edinburgh Shipping Co.* (1877), 2 Ex. D. 467; *The Monkseaton* (1889), 14 P. D. 51; and see *per* Butt, J., *The Naples* (1886), 11 P. D. 124;

The Batavier (1890), 15 P. D. 37.

(s) *The Catalina* (1855), 2 Sp. 23.

(t) *The Celt* (1837), 3 Hag. Ad. 321.

(u) *The City of Manchester* (1880), 5 P. D. 221, reversing the decision of the Court below; *The Hibernia* (1874), 2 Asp. M. C. 454. *The Milan* (1860), Lush. 388, would not, it seems, now be followed on this point.

(x) See *per* James, L. J., 5 P. D. at p. 223. Baggallay, L. J., in the same case thought that neither party should get any costs.

steamship with which she had been in collision, the owners of the steamship having attempted to cast the whole blame on the tug, their vessel was found alone to blame, and they were ordered to pay the costs, both of their co-defendants and of the plaintiffs (*y*).

Costs in case of collision with one of his Majesty's ships.

In the case of a collision with a King's ship, the Crown used to conform to the practice of the Court as to payment of costs (*z*), and now by the Admiralty Suits Act, 1868, the Admiralty, if it brings an action, is liable to pay or receive costs according to the ordinary practice (*a*).

Judgment with costs cannot be altered.

In an action in the City of London Court, after judgment for the plaintiff with costs, and before the reference, the defendant paid into Court a sum which at the reference was found sufficient to cover the damages. The judge thereupon altered his judgment as to the costs of the action, and ordered the plaintiff to pay them. It was held by the Court of Appeal that he had no power to make such an order (*b*).

Costs of the reference.

The costs of a reference do not follow the costs of the action (*c*), for the investigation before the registrar is in the nature of a new litigation, and the costs of it are in the discretion of the registrar (*d*); subject to an appeal to the Court. The general rule now is that except under special circumstances, the claimant is entitled to his costs, irrespective of the proportion which the amount allowed bears to the amount claimed. The rule is the same whether one or both ships are in fault (*e*); whether the claim is by an owner of ship or of cargo (*f*); whether the claimant is plaintiff or defendant claiming upon a counterclaim (*g*); and whether, both ships being in fault, proceedings upon the reference have been taken with respect to the damage to one or both ships (*h*).

(*y*) *The River Lagan* (1886), 6 Asp. M. C. 281, followed in *The Mystery*, (1902) P. 115.

(*z*) *H.M.S. Swallow* (1857), Swab. 30.

(*a*) 31 & 32 Vict. c. 78, s. 5.

(*b*) *The Receipta*, (1893) P. 255, 265.

(*c*) Formerly a different practice prevailed: see *The Peerless* (1862), 6 L. T. 107.

(*d*) S. C. Rules, Ord. LVI. r. 8; *The Friedeberg* (1885), 10 P. D. 112.

(*e*) *The Consett* (1880), 5 P. D. 52; *The Savernake* (1880), 5 P. D. 166; and *The Mary* (1882), 7 P. D. 201, both were in fault.

(*f*) In *The Consett* (1880), 5 P. D. 52, 77, the claim was by cargo-owner.

(*g*) In *The Mary* both plaintiff and defendant got their costs.

(*h*) In *The Savernake* (1880), 5 P. D. 166, it did not appear that before the reference any proceedings had been taken by one of the ships.

Where a party before the reference was heard offered to admit his opponent's claim at a figure which was refused, and the result of the reference was that the claim was allowed at a smaller sum than that offered, the costs subsequent to the offer were allowed to the party making it (*i*). Where at the reference in a limitation action an exorbitant claim was made, the claimant was ordered to bear his own costs (*k*), and where in a limitation action the cargo owners contested the ship claim and reduced it materially on the point whether the ship was or was not a constructive total loss, the ship claimants were ordered to pay the costs of the cargo owners over and above the costs of the cargo owners in proving their claim (*l*).

The report of the registrar is seldom disturbed (*m*). Where there is no report, an order as to the costs will be made upon motion by the Court (*n*).

Report of registrar as to costs.

The costs of an appeal from the registrar, as a general rule, follow the result of the appeal (*o*).

Costs of appeal from registrar.

The cardinal principle in regard to the costs of an appeal is that costs shall be given to the successful party whether appellant or respondent; thus where the Court below held one ship only to blame, and such ship appealed, and admitting that it was to blame, claimed that the other ship was also to blame, and this contention succeeded, it was held that the appellant was entitled to the costs of the appeal (*p*).

Costs in Court of Appeal.

In *The Ann* (*q*) the Privy Council dismissed the appeal, but without costs, because, although the appellant's ship had been found solely in fault in the Court below, whereas in the opinion of the Privy Council she was free from blame, the appellant had in his pleadings alleged that the collision was caused by his adversary's ship starboarding, the fact being that she had caused the collision by not porting in time. A

(*i*) *The Reading*, (1908) P. 162.

(*k*) *The Rijnstroom* (1899), 8 Asp. M. C. 538.

(*l*) *The Chatham* (1907), Fo. 460, Ad. Court, October 26th, 1908.

(*m*) *The Consett* (1880), 5 P. D. 77; *The Savernake* (1880), 5 P. D. 166.

(*n*) *The Mary* (1882), 7 P. D. 201.

(*o*) *The Black Prince* (1860), Lush. 568; *The Parana* (1876), 1

P. D. 452; 2 P. D. 118; and recent unreported cases, e.g., *The Lindisfarne* (1908), Fo. 604.

(*p*) *The London*, (1905) P. 152; 10 Asp. 109; *The Anselm*, (1907) P. 151; *The Ceto* (1888), 14 App. Cas. 670; 6 Asp. 479. These cases clearly overrule such decisions as *The Hector* (1883), 8 P. D. 218, and *The Rigborgs Minde* (1883), 8 P. D. 132.

(*q*) Lush. 55.

similar order was made where, both ships having been held in fault in the Court below, it was held upon appeal that neither was in fault (*r*).

On the principle above stated (*s*), the Court of Appeal, reversing the decision of the Court below, having found the collision to have occurred without fault in either ship, the ship sued was given her costs both of the appeal and in the Court below (*t*).

Likewise where both ships are held in fault in the Court below, and upon the appeal by one of the parties the other party applies to have the judgment varied or reversed, and the Court of Appeal affirms the decision of the Court below, the appellant will be ordered to pay the costs of the appeal, except so far as they have been augmented by the notice given by the respondent (*u*).

Where in the Court below both ships are held in fault, and one only of them appeals, and the appeal is dismissed, the appellant will be ordered to pay the costs of the appeal (*x*).

Where, upon a claim and counterclaim, ship A. is held solely in fault, and upon appeal the decision is reversed, and ship B. held solely in fault, the appellant will get his costs both of the appeal and in the Court below (*y*).

Security for
costs.

A plaintiff, or a defendant having a counterclaim, who is resident out of the jurisdiction elsewhere than in Scotland or Ireland (*z*), may be required to give security for costs (*a*); but he will not be required to give security for damages that may be awarded against him (*b*).

Costs of
action for

The general rule as to the costs of an action for limitation

(*r*) *The Utopia*, (1893) App. Cas. 492.

(*s*) Notwithstanding *The Swansea* and *The Conдор* (1879), 4 P. D. 115, and *The Milanese* (1881), 4 Asp. M. C. 318.

(*t*) *The Monkseaton* (1889), 14 P. D. 51; but see *The Marpesia* (1872), L. R. 4 P. C. 212; *The City of Cambridge* (1876), 3 Asp. M. C. 307. In *The Chance* (March 8th, 1907, Shipping Gazette), appellants who succeeded in establishing the defence of inevitable accident in the Court of Appeal were given the costs of the appeal, but each side was ordered to bear their own costs in the Court below.

(*u*) *The Lauretta* (1879), 4 P. D. 25.

(*x*) *The Milanese* (1881), 4 Asp. M. C. 438; and see *per Brett*, L. J., in *The Hector* (1883), 8 P. D. 218.

(*y*) *The Glannibanta* (1876), 1 P. D. 283.

(*z*) See 31 & 32 Vict. c. 56; 36 & 37 Vict. c. 66, s. 76; *The Pelaw* (1875), cited Williams & Bruce, Ad. Fr. 3rd ed. 482, note (*i*).

(*a*) *The Constantine* (1879), 4 P. D. 156; *The Newbattle* (1885), 10 P. D. 33; *The Julia Fisher* (1877), 2 P. D. 115.

(*b*) *The Mary* or *Alexandra* (1866), L. R. 1 A. & E. 335.

of liability is that they shall be borne by the plaintiff. But if the defendant raises at the trial or at the reference (*c*) issues which are decided against him, as where he disputes the right of the plaintiff on the ground that the loss was by and with the privity of the owners (*d*), or was not caused by improper navigation (*e*), or that there is a separate liability in respect of each of two collisions (*f*), he will be compelled to pay the extra costs occasioned to the plaintiff by such issues. Nor will the plaintiff in the limitation action have to pay the costs of litigation between the claimants upon the fund representing the amount of their statutory liability as to their respective rights to share in the fund (*g*).

limitation of liability.

As already said (*ante*, p. 289), costs are now in all cases in the discretion of the Court. The provisions therefore of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), ss. 3, 9, as to costs, are no longer in force, and a plaintiff who brings his action in the Supreme Court may receive his costs, though the amount of his damages is less than the County Court (Admiralty) limit (*h*); but in practice he will not get them unless there are special circumstances justifying his proceeding in the High Court (*i*). In *The Saltburn*, for example (*k*), such circumstances were held to exist. The size of the vessels, the nature of the collision, the length of the trial, and the judgment pronounced were such that the Court was satisfied that the plaintiff had acted reasonably in bringing the action in the High Court; similar decisions have been given according to the circumstances of the case.

Costs of action for amount below County Court limit.

(*c*) *The Rijnstroom* (1899), 8 Asp. M. C. 538.

(*d*) *African Steamship Co. v. Swanzy* (1856), 2 K. & J. 660; *The City of Buenos Ayres* (1872), 1 Asp. M. C. 169; *The Empusa* (1880), 5 P. D. 6.

(*e*) *The Warkworth* (1884), 9 P. D. 20.

(*f*) *The Creadon* (1886), 5 Asp. M. C. 585.

(*g*) *African Steamship Co. v. Swanzy*, *ubi supra*; *The City of Buenos Ayres*, *ubi supra*; *The Empusa*, *ubi supra*. As to the costs of an exorbitant claim at the reference, see *The Rijnstroom*, *supra*.

(*h*) *Garnett v. Bradley* (1877), L. R. 3 App. Cas. 944; *Tennant & Co. v. Ellis & Co.* (1881), 6 Q. B. D. 46; *The Camellia* (1884), 9 P. D. 27; *Snelling v. Pulling* (1885), 29 Ch. D. 85; *Parnell v. Mort, Lidell & Co.*, *ibid.* 325.

(*i*) *The Herald* (1889), 6 Asp. M. C. 542; *The Asia*, (1891) P. 121; *The Zeta*, (1891) P. 216; (1893) App. Cas. 468; *Rockett v. Chippingdale*, (1891) 2 Q. B. 293, where Lord Fisher remarked that no rule was intended to be laid down in *The Asia*, *supra*.

(*k*) (1892) P. 333.

Costs of
appeal from
County Court.

Upon appeal from a County Court, the above Act of 1868, s. 30, provides that an unsuccessful appellant shall pay the costs of the appeal, unless the Appellate Court otherwise directs. This enactment, if not repealed, is subject to the discretion vested in Divisional Courts by Ord. XLV. r. 1.

Costs of
excessive bail.

If a plaintiff arrests the defendant ship, and requires bail for an exorbitant sum, he will be ordered to pay all the costs and expenses to which the defendants have been put in finding bail. Such an order is sometimes made in a salvage action, as where 3,000*l.* was claimed, and bail for that sum required, and only 450*l.* was awarded (*l*), but seldom in a collision action, as the amount of the claim is usually difficult to formulate at the time of the issue of the writ (*m*).

Attendance
of country
solicitor.

The costs of the attendance of the country solicitor at the trial in London will be usually allowed on taxation.

Paying
freight into
Court.

The owner of cargo arrested for freight, upon paying into Court the amount of freight, may deduct the cost of paying it in (*n*).

Expense of
sureties.

Money paid to sureties on a bail bond in consideration of their suretyship will be allowed as costs (*o*).

Detaining
seamen as
witnesses.

The expense of detaining seamen witnesses until the trial is allowed as costs (*p*), when such detention is, under the circumstances, reasonably necessary.

Examiner's
mistake.

Costs occasioned by a mistake of the examiner in taking evidence are costs in the cause (*q*).

Shorthand
notes.

Judgment with costs does not include the cost of a transcript of shorthand notes, unless it is applied for at the trial and specially ordered (*r*).

(*l*) *The George Gordon* (1884), 9 P. D. 46; and see *The Earl Grey* (1853), 1 Sp. 180; *The Eléonore* (1864), Br. & L. 185. As to moderation of bail, see *supra*, p. 95.

(*m*) *The Princess Marie José* (1913), 12 Asp. M. C. 360; an instance in a collision case.

(*n*) *The Leo* (1860), Lush: 444.

See Ord. XXIX. r. 4.

(*o*) Ord. XII. r. 21A.

(*p*) *The Karla* (1864), Br. & L. 367.

(*q*) *The Knutsford*, (1891) P. 219.

(*r*) *The Turret Court* (1900), 9 Asp. M. C. 162.

CHAPTER XIV.

THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

IN the year 1840 a rule (*a*) as to the side on which steamships were to pass each other was promulgated by the London Trinity House, and enforced by the Admiralty Court. In 1846 the subject was first dealt with by the Legislature (*b*), and since that year the law has been altered or added to by four successive Acts of Parliament (*c*). The only Act now in force is the Merchant Shipping Act, 1894.

By that Act (sect. 418), power is given to his Majesty, Enactment of the existing regulations. upon the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, to make regulations for preventing collisions at sea. Such regulations are to apply to British ships everywhere (*d*), and to foreign ships when within British jurisdiction.

By Order in Council of 13th October, 1910 (*e*), the Regulations of 1896, and the subsequent amendments, were re-

(*a*) This rule—to the effect that steamships shall pass on the star-board hand of each other—will be found 1 W. Rob. 488. As to its construction, see *The Friends* (1842), 1 W. Rob. 484; 4 Moo. P. C. 314; *The Unity*, Swab. 101; *The Duke of Sussex* (1841), 1 W. Rob. 274; *The Hope* (1840), *ibid.* 154; *The Immaganda Sara Clasina* (1850), 8 Moo. P. C. 85.

(*b*) 9 & 10 Vict. c. 100.

(*c*) 14 & 15 Vict. c. 79; 17 & 18 Vict. c. 104; Admiralty Order of 26th Oct. 1858, see Appendix, Swabey's Rep.; 25 & 26 Vict. c. 63; 57 & 58 Vict. c. 60, and *supra*, Chap. II. pp. 52 *seq.*

(*d*) This is not expressly enacted, but is probably the true construction of sect. 418. The Order in Council of 13th October, 1910, made under this section applies the regulations to all British ships.

Part V. of the Act, in which sect. 418 is contained, is not made applicable to all British ships as was the corresponding Part IV. of the Merchant Shipping Act, 1854. The Legislatures of the oversea dominions usually pass Acts adopting new regulations shortly after they are published, but a question might arise as to whether the Order in Council is effective to impose obligations on the owners of a ship registered in a British dominion overseas. As to whether the whole of the Merchant Shipping Acts apply to the Colonies, see *The Rajah of Cochin* (1859), Swab. 473.

(*e*) Printed in Chitty's Statutes, 6th ed. vol. 13, p. 667, and in Stat. R. & O., 1910, p. 457. The regulations are printed *infra*, p. 491.

pealed, and the regulations printed below (hereinafter called the Regulations of 1910) were substituted for them.

By sect. 424 of the Act, his Majesty is empowered, with the consent of the foreign government, to direct that the regulations shall apply to the ships of foreign countries, whether within British jurisdiction or not, and that such ships shall, for the purpose of the regulations, be treated as if they were British ships. By the Order in Council of 13th October, 1910, they have been applied to ships of the Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chili, China, Costa Rica, Denmark, Ecuador, Egypt, France, Germany, Greece, Guatemala, Italy, Japan, Mexico, Netherlands, Norway, Peru, Portugal, Roumania, Russia, Siam, Spain, Sweden, Turkey, United States and Venezuela; with a proviso that, in the case of China, they shall apply only to ships of foreign type, and subject to Art. 9 not applying to Chinese and Siamese vessels, and in part not to Dutch and Russian vessels, and to qualifications of Art. 15 as to Dutch steam pilot vessels and Turkish vessels (f).

Proof of regulations.

Production of the Gazette containing the Order in Council making or altering such regulations, or a copy of the regulations signed or purporting to be signed by a secretary or assistant secretary of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, is sufficient evidence of the due making and purport of such regulations (g).

Submarine Telegraph Act, 1885.

The Submarine Telegraph Act, 1885 (48 & 49 Vict. c. 49), embodying a Convention, to which the principal maritime nations are parties, provides for the making of special regulations for preventing collision with ships engaged in

(f) The list includes most maritime nations; a few Central and South American States are omitted, of which the more important are Colombia, Honduras, Nicaragua, Panama and Uruguay, as are also the Dominican Republic and Haiti in the island of San Domingo and Liberia in West Africa. There would appear to be no Order in Council applying any regulations to ships of these States. The Order in Council which applied the re-

gulations of 1879 to ships of the Feudatory Indian States of Cochin, Kutch and Travancore, of Muscat, an independent State under British protection, and of Zanzibar, now a British Protectorate, has not been repealed. Whether the regulations apply to Egyptian and Cypriot ships is by no means clear.

(g) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 695, 719, 738.

telegraph cable work. No such regulations as are referred to in the Convention have been agreed to by the signatory Powers up to the present date. The Convention has been amended, with reference to the liability for damage to cables, by 50 Vict. c. 3, and an Order in Council of 3rd May, 1888, in pursuance of a notice of 20th April, 1888 (gazetted 24th April, 1888).

In accordance with the powers conferred by the Merchant Shipping Act, 1894, the Crown may "make regulations for the prevention of collisions at sea, and may thereby regulate the lights to be carried and exhibited, the fog signals to be carried and used, and the steering and sailing rules to be observed by ships . . ." These words have been the object of close scrutiny. The power conferred is to "make regulations for the prevention of collisions at sea" (*h*), and the Order in Council of 13th October, 1910, describes the regulations contained in the schedule attached thereto as being such regulations (*i*). The preliminary paragraph of the regulations, on the other hand, lays down that the "rules shall be followed upon the high seas and in all waters connected therewith, navigable by sea-going vessels." In view of this discrepancy it was contended in respect of a collision, which occurred in the Para estuary of the River Amazon (*j*), that the regulations were not applicable to these waters, and that, in so far as they purported to control the navigation of vessels in such waters, they were *ultra vires*. The Court of Appeal, having regard to the many cases (*k*) in which the regulations

Scope of authority to make regulations conferred by Merchant Shipping Act, 1894, s. 418 (*i*).

(*h*) The Act (s. 421), and also Art. 30 (*infra*, p. 484), preserve the force of rules made under local Acts; and the same section enables the King to make rules for waters where there is no other authority to make them. Under this power rules have been made for Windermere Lake; Ord. in Council, 19th Nov. 1902.

(*i*) The question whether the section gives power to make regulations for British ships not registered in this country has been referred to *supra*, p. 297, note (*d*).

(*j*) *The Anselm*, (1907) P. 151.

(*k*) *The Concordia* (1866), L. R.

1 A. & E. 93; *The Velocity* (1869), L. R. 3 P. C. 44; *The Cologne* and *The Ranger* (1872), L. R. 4 P. C. 519; *The Owen Wallis* (1874), L. R. 4 A. & E. 175; *The Khedive* (1880), 5 App. Cas. 876 (Penang channel); and see *The Fyenoord* (1857), Swab. 374; *The Germania*, P. C. 17th June, 1875, cited 1 Maude & Pollock on Shipping, 606, note (*i*); *The Leverington* (1886), 11 P. D. 117. In America the Act of Congress embodying the regulations of 1863 is expressed to be for preventing collisions "on water." In Canada the regulations are applicable over all

have been treated as applicable to rivers and narrow waters, refused to interfere with what had become the established practice, and it may now be regarded as settled law, so far as that Court is concerned, that the regulations are applicable to all waters within the preliminary paragraph.

The regulations can, however, only apply to waters which are within the preliminary paragraph of the regulations, and accordingly do not apply to an artificial channel connected with the sea by means of locks, such as the Manchester Ship Canal (l).

It has also been unsuccessfully contended that no power is given by the Merchant Shipping Act to make regulations in regard to sound signals other than fog signals (m).

In regard to the regulations, it has been said that their object is not only to prevent collisions but to minimise their effects (n). It is not clear that his Majesty has power to make regulations for any object but to prevent collisions. Any regulation, however, directed to mitigate the effect of a collision would probably be held to tend to the prevention of collision, and to be well made under the powers given by the Act above mentioned.

On the sea, everywhere, except where inconsistent (o) local rules are in force, the collision regulations are directly applicable (p). Their application in winding rivers and in waters

the inland and other navigable waters of the Dominion, except the Great Lakes and their connecting and tributary waters, where other rules apply. The regulations are applied to Canadian waters by Canadian Orders in Council made under powers contained in the Statute, c. 79 of the Revised Statutes of Canada. In 1917 the regulations of 1896 were still in force. Rules for the Great Lakes were made by the Canadian Order in Council of 4th February, 1916.

(l) *The Hare*, (1904) P. 331. In America, power is given by Act of Congress of 19th Feb. 1895, c. 102, to a department of the Government to fix the line dividing waters within which the sea regulations are applicable from inland and coast waters within which local rules are

in force. The "London Gazette" of 30th March, 1897, contains Notices to Mariners (No. 349 of 1895, and No. 171 of 1897) of the fixing of such lines in certain American waters.

(m) *The Aristocrat*, (1908) P. 9.

(n) See per Lord Watson in *The Voorwaarts* and *The Khedive* (1880), 5 App. Cas. 876, 903, 904; and see *MacLaren v. Compagnie, &c.* (1883), 9 App. Cas. 640, 651, 652.

(o) *The Bitinia*, (1912) P. 186; 43 Vict. c. 29 (Canada), s. 4, makes void local rules which are inconsistent with the regulations.

(p) See *The Saxonia* (1862), Lush. 410, as to the application of a former Act to foreign ships in the Solent.

where local rules are in force is considered below under Arts. 19, 25 and 29.

By Scottish Courts the regulations have been held to apply in the Clyde. Notwithstanding the existence of local rules of navigation applicable to the Clyde, a steamship was held in fault for disobedience to Arts. 13 and 18 of the Regulations of 1863 (*q*). From this decision it appears that in Scotland the regulations are held to be applicable in rivers, as well as at sea, and that where local rules are in force they are to be construed and applied in conjunction with the general regulations. In *The Carlotta* (*r*) Gorell Barnes, J., was disposed to hold that they so apply in the Thames.

It is said that the regulations apply to all seagoing ships and craft, whether large or small, and whether propelled by oars, sails, or steam (*s*). A large and unwieldy steamship will not be heard to allege, as an excuse for not obeying them, that the craft with which she was in collision was a small and handy boat that could easily have got out of the way; or that she (the steamship) was a trader carrying mails, and that the plaintiff ship was a pleasure craft (*t*). Whether they applied to craft intended never to go to sea, as hulks, harbour lighters, and such craft, was doubtful (*u*), but since 1896 it has been laid down in the preliminary article that the rules shall be followed by all vessels upon the high seas, and in all waters connected therewith, navigable by sea-

To what ships
they apply.

(*q*) *Little v. Burns, The Owl and The Ariadne* (1881), 9 Ct. of Sess. Cas. 4th ser. 118, where, however, the ship was in fault upon the facts. See also *The Germania* (1875), cited Maude & Pollock on Shipping, 4th ed. 606, note (*t*), where the collision was in the Humber, near the Flat Holm Sand, and the regulations as to lights were held to apply. In *The Pekin*, (1897) App. Cas. 533, they were applied in a foreign river. In *The Nerano* and *The Dromedary* (1895), 22 Ct. of Sess. Cas. 4th ser. 237, it was assumed that the sea regulations applied in the Clyde. But in none of these cases was the point really discussed.

(*r*) (1899) P. 223.

(*s*) *Ex parte Ferguson and*

Hutchinson (1871), L. R. 6 Q. B. 280; and see the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), ss. 25, 27 and 28, where the regulations, including those for fishing boats, are spoken of as regulations for ships.

(*t*) *The Medusa*, 46 Fed. Rep. 303.

(*u*) *The C. S. Butler* (1875), L. R. 4 A. & E. 238. In *Salt Union v. Wood*, (1893) 1 Q. B. 370, a screw steamship used exclusively on the rivers Weaver and Mersey was held not a seagoing ship. A hulk was held not to be a ship within the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 55; *European, &c. Mail Co. v. P. & O. Steam Navigation Co.* (1866), 14 L. T. 704.

going vessels. Whether a "vessel" which is not a "ship" is bound by the regulations is doubtful. The power given by the Act is to make regulations for "ships," and a vessel propelled by oars is not a "ship" by the definition in section 742. As to their application to his Majesty's ships, ships of foreign governments, and ships sailing under convoy, see Art. 13, *infra*, p. 346.

The regulations apply to British ships everywhere (*x*). To foreign ships within British jurisdiction, by the Merchant Shipping Act, 1894, s. 418, they apply directly, as forming part of the municipal law of this country. They are also applicable to foreign ships out of British jurisdiction, and, in the case of a collision on the high seas, or in foreign waters, are applied to such ships by British Courts by virtue of the Merchant Shipping Act, 1894, s. 424.

Their international character.

The regulations are part of the municipal law of this country, of some foreign countries (*y*), and of several British Colonies. In the United States it has been held that, having been adopted by all maritime nations, the regulations are of universal application, and form part of the international or general maritime law of the world (*z*).

Uniform construction of the regulations desirable.

The international character of the regulations, and the safety of navigation, require that they should be understood by the seamen of different nations in the same sense. It is therefore of importance that the construction placed upon them by the Courts of different countries should be uniform. This has been distinctly recognized in America. The following observations occur in a judgment of a Circuit Court of the United States: "The paramount importance of having international rules, which are intended to become part of the law of nations, understood alike by all maritime powers, is manifest; and the adoption of any reasonable construction of them by the maritime Powers named affords

(*x*) Subject to local rules, and in colonial and foreign waters to colonial and municipal laws. In America it has been doubted whether two American ships, whilst passing through Canadian waters on their voyages to and from American ports, are required to comply with the sea regulations or

Canadian local rules: *The New York*, 82 Fed. Rep. 819.

(*y*) Amongst others, the United States, where they apply to all public and private vessels: Ch. 802 of the laws of 1890; and Germany.

(*z*) *The Scotia* and *The Berkshire*, 14 Wall. 170; *The Belgenland*, 7 Davis, 355.

sufficient ground for the adoption of a similar construction of our statute by the Courts of this country" (a).

In the Courts of this country the ships of a foreign country to which the regulations have been applied by Order in Council, will, it is conceived, be bound by the English version of the regulations. The foreign versions of the Regulations of 1863 were not, in all cases, exactly equivalent to the English version. An important article of the Portuguese regulations was open to a construction which was entirely different to that borne by the English version (b).

The following observations of Jessel, M. R., upon the construction of the Thames Rules appear to supply the rule for construing all statutory regulations for preventing collisions (c): "It must be remembered what these rules are. They are issued for the guidance of masters of vessels; and, therefore, the proper mode of construing them is to read them literally. . . . Certainly rules issued as these are should be construed literally, if they can be construed at all." In *The Dunelm* (d), Brett, M. R., with reference to Art. 9 of the Regulations of 1863, said: "My view of an Act of Parliament—and this article is equivalent to an Act of Parliament—which is made applicable to a large trade or business is, that it should be construed, if possible, not according to the strictest and nicest interpretation of language, but according to a reasonable and business interpretation of it with regard to the trade or business with which it is dealing." And in another case the same learned judge said: "I take it that the basis of the regulations for preventing collisions at sea is, that they are instructions to those in charge of ships as to their conduct; and the Legislature has not thought it enough to say, 'We will give you rules which shall prevent a collision'; they have gone further and said that, for the safety of navigation, we will give you rules which shall prevent risk of collision" (e).

Rule for construing them.

(a) *Per* Benedict, J., in *The Sylvester Hale*, 6 Bened. 523; and a similar opinion was expressed by the Court in *The Free State*, Brown, Ad. 251, 261.

(b) See correspondence relating to the collision between *The Insulano* and *The City of Mecca*,

Parl. Pap. C. 3443, Sess. 1882.

(c) *The Libra* (1881), 6 P. D. 139, 142. See also *per* Brett, M. R., in *The Margaret* (1884), 9 P. D. 47.

(d) (1884), 9 P. D. 164.

(e) *Per* Brett, M. R., *The Beryl* (1884), 9 P. D. 137, 138; see also

Circumstances under which regulations are applicable; risk of collision.

The question as to the time and circumstances at and under which the regulations become applicable was discussed by Brett, M. R., in *The Beryl* (f). The Master of the Rolls, and the other members of the Court of Appeal (Bowen and Fry, L.J.J.), held that the regulations were intended not only to prevent collision, but to prevent risk of collision; and that it is a rule of interpretation of the regulations that "they are all applicable at a time when the risk of collision can be avoided, not that they are applicable when the risk of collision is already fixed and determined." The Court laid stress upon the words "so as to involve risk of collision," which occur in several of the Articles (g), and held that they do not refer to an existing risk of collision, but point to a time before risk of collision has arisen, and where it is, or ought to be, apparent that there will be risk, if nothing is done to prevent it (h). "Another rule of interpretation of these regulations is (the object of them being to avoid risk of collision), that they are all applicable at a time when the risk of collision can be avoided—not that they are applicable when the risk of collision is already fixed and determined. We have always said that the right moment of time to be considered is that which exists at the moment before the risk of collision is constituted" (i). So, in *The Stanmore* (k), Brett, M. R., held the regulations to apply where there is "a probability of risk."

American cases as to the meaning of "risk of collision."

The difficulty of defining the moment at which these regulations become applicable has been recognized by the American Courts (l). The following passage from a judgment of the Supreme Court of the United States expresses the general rule as to the time at which and during which they become and remain applicable:—"Rules of navigation, such as have been mentioned (as to the duties of two vessels

The London, (1904) P. 355, 357, 358.

(f) (1884), 9 P. D. 137; and in *The Dordogne* (1885), 10 P. D. 6. See also *The Ebor* (1886), 11 P. D. 24, 29; *The Memnon* (1889), 6 Asp. M. C. 317.

(g) In Art. 20 the words "such directions" are substituted for "so."

(h) In *The Bellanoch*, (1907) P.

170, 192, it was stated that this was the rule laid down in *The Beryl*, *infra*. By applying the rule stated in this form it is easy in most cases to determine the time when the regulations begin to govern the situation.

(i) *Per* Brett, M. R., *The Beryl* (1884), 9 P. D. 137, 140.

(k) (1885), 10 P. D. 134.

(l) *The Nicholls*, 7 Wall. 656.

approaching each other), are obligatory upon such vessels when approaching each other from the time the necessity for precaution begins; and they continue to be applicable as the vessels advance so long as the means and opportunity to avoid the danger remain. They do not apply to a vessel required to keep her course after the approach is so near that the collision is inevitable, and are equally inapplicable to vessels of every description while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision" (m).

It would therefore seem that the regulations do not apply, or at least that departure from them is justifiable, where the collision is in fact inevitable, though there appears to be a chance of escape by departing from the regulations (n).

In *The Milwaukee* (o), it was said by the same American Court that where vessels are meeting or passing in a crooked and narrow channel there is always risk of collision.

In *The Libra* (p), decided under the Thames Rules, in which the same phrase, "risk of collision," occurs, Brett, L. J., considered that, when the vessels were each rounding a point upon concentric circles of different diameters, and so that they would clear each other without further alteration of the helms than the course of the river required, there was no risk of collision.

What constitutes risk of collision it is difficult to define; "It was utterly impossible for the Legislature to have determined, or described, what should constitute risk of a collision; for that must always be decided, according to the circumstances of each case, by men of nautical experience" (q). It has been described as a "chance," a "probability," a "strong," or a "reasonable" (r) probability of collision;

What constitutes "risk of collision."

(m) *The Wenona*, 19 Wall. 41, 52; *Lake Erie Transp. Co. v. Gilchrist Transp. Co.*, 142 Fed. Rep. 89. Similar expressions occur in the judgments in *The Nicholls*, 7 Wall. 656; *The Johnson*, 9 Wall. 146; and *The Dexter*, 23 Wall. 69.

(n) See *The Benares* (1884), 9 P. D. 16.

(o) *Brown*, Ad. 313; *The Newport News*, 83 Fed. Rep. 522.

(p) (1881), 6 P. D. 139, *infra*, p. 541.

(q) *Per* Dr. Lushington in *The Mangerton* (1857), Swab. 120.

(r) *The Cleopatra* (1857), Swab. 135; *The Ericsson*, *ibid.* 38; *The Duke of Sussex* (1840), 1 W. Rob. 274; *The Dumfries* (1857), Swab. 63, 65; with reference to the same expression in the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 296.

and distinguished from a "possibility" of collision (s). In a case under the Steam Navigation Act, 1851 (t), Dr. Lushington said: "This chance of collision is not to be scanned by a point or two. We have held over and over again that if there be a reasonable chance of collision it is quite sufficient.

. . . We have never got to this, and I hope never shall, that it (the rule) applies where two vessels are sailing properly, and there is no chance of a collision" (u). In another case the same learned judge said: "The whole evidence shows that it was the duty of *The Colonia*, with the wind free, to have made certain of avoiding *The Susan*. She did not do so, but kept her course till she was at so short a distance of a cable and a half's length, in the hope that the vessels might pass each other. Now it never can be allowed to a vessel to enter into nice calculations of this kind, which must be attended with some risk, whilst it has the power to adopt, long before the collision, measures which would render it impossible" (x). A vessel is not entitled to run the matter very fine and to go on until the last moment before stopping and reversing (y). But risk of collision, such as will bring into operation Art. 23 (requiring a steamship under certain circumstances to slacken her speed or to stop or reverse), appears to be of a more imminent character than that which brings other articles into operation. The question will be considered below in connection with that article. If a vessel is disabled, or slow in answering her helm, it is her duty to be prompt in taking the measures required by the regulations (z).

Uncertainty
as to facts
causing risk.

The distance, rate of sailing, and course of another vessel, and the direction of the wind, are never known exactly, and in practice there is often difficulty in determining the moment at which, and the manner in which, the regulations are to be applied (a). In judging of the course and probable move-

(s) *The Ericsson* (1857), Swab. 38. But see *The Voorwaarts* and *The Khedive*, per Lord Hatherley (1880), 5 App. Cas. 876, 905; and per Pollock, C. B., *General Steam Navigation Co. v. Mann* (1853), 14 C. B. 127, 132.

(t) 14 & 15 Vict. c. 79.

(u) *The Sylph* (1855), 2 Sp. 75, 82.

(x) *The Colonia*, 3 Not. of Cas. 13, note.

(y) *Wilson, Sons & Co. v. Currie*, (1894) App. Cas. 116, 120; per Lord Herschell, L. C.; and see *supra*, p. 9.

(z) *The Test* (1847), 5 Not. of Cas. 276.

(a) In the Courts, owing to the form of the pleadings, the question as to the moment when the regulations become applicable does not often arise.

ments of a strange vessel, it must be assumed, under ordinary circumstances, that she can, and will, comply with the regulations (b).

Where there is no risk of collision, a vessel that improperly alters her helm so as to bring about a collision will be held to be in fault (c). Alteration of course so as to cause risk.

If a ship sees another in a position that may involve risk of collision, but is unable to make out what course the other is on, she should keep her course, and not alter her helm, or take any decisive step until she has ascertained the other ship's course (d). "The mere discovery of a strange light does not necessarily immediately bind a person in charge of a vessel to follow any particular rule; but as soon as he has opportunity of ascertaining, by reasonable care and skill, what the strange vessel is, and what course she is pursuing, then the rule which is applicable to the circumstances at once becomes binding on him" (e). Regulations not applicable until facts known.

In practice, one of the most usual indications of risk of collision is that the approaching ship remains upon the same bearing from the observing ship for an appreciable length of time. If the bearing alters quickly when the ships are a considerable distance apart, there is no risk. The existing regulations (Art. 17) call attention to this fact (f), and neglect to take compass bearings has been held faulty navigation (g).^a Indications of risk. Approaching ship not altering her bearing.

Another indication of risk of collision at night is the Opening or closing of

(b) *The Jesmond and The Earl of Elgin* (1871), L. R. 4 F. C. 1; *Wilson, Sons & Co. v. Currie*, (1894) App. Cas. 116. See also *The Free State*, 1 Otto, 200, for a decision of the Supreme Court of the United States to the same effect. The view seems to have been taken in some American cases that the steps required by the regulations should be taken, and the helm altered, before any risk is incurred, if the courses are such that, if continued, there would be risk. See *The Milwaukee*, Brown, Ad. 313, 331. In the same case, it was held that the chance of the other vessel disobeying the regulations must be taken into account. *Sed qu.*

(c) *The Velocity* (1869), L. R. 3 P. C. 44; *The Esk and The Niord* (1871), L. R. 3 P. C. 436; *The Inflexible* (1856), Swab. 32; *The Seaton* (1884), 9 P. D. 1; *The City of Macon*, 92 Fed. Rep. 207.

(d) *The Rona and The Ava* (1874), 2 Asp. M. C. 182; *The James Watt* (1844), 2 W. Rob. 270; *The Moderation* (1864), 9 L. T. 586; 1 Moo. P. C. 528; *The Bougainville and The James C. Stevenson* (1874), L. R. 5 P. C. 316, 321.

(e) *Per Dr. Lushington, The Great Eastern* (1865), 11 L. T. 6.

(f) See *The City of Berlin*. (1908) P. 110.

(g) *The President Lincoln*, (1911) P. 248.

masthead and side light. alteration of the apparent horizontal distance between an approaching steamship's masthead and side light. This alteration usually indicates a change in direction of the approaching ship's head and course, but it is of little value in estimating risk of collision, unless the relative positions of the masthead and side lights are known. Steamships' side lights are seldom carried exactly abreast of her masthead light, and are often a considerable distance forward or aft of it. In most vessels they are carried abaft the masthead light; but in some of the newer vessels, and in ocean liners, they are carried in miniature lighthouses erected on the deck forward of the masthead light. When the relative position of the lights is known, the alteration in the ship's course may be known by the following rule:—

Where the side light is abaft the masthead light, the apparent distance between those lights increases as the ship's head turns away from the observer; they close as the ship's head is turning towards him (*h*). Where the side light is forward of the masthead light, the masthead and side light broaden as the ship's head is turning towards an observer forward of a line joining the masthead and side lights; whilst to an observer abaft that line, the lights are at the same time closing (*i*).

Alteration of helm in fog.

An alteration of the helm in a fog, when the other ship cannot be seen and only her whistle is heard, is not necessarily negligence, though it is made merely upon a guess as to the distance, course, speed, and direction of the other ship, and may, where the position of the other vessel is ascertained beyond reasonable doubt, be required under the rules (*j*). As a general rule, where a reasonable doubt exists as to the position of the other ship, a ship should not alter her course; but each case must depend upon its own circumstances, and it cannot be laid down that every alteration of

(*h*) Except in the case of an observer abaft the line at right angles to a line joining the masthead and side lights (supposing them to be in the same horizontal plane), a case which for the present purpose may be neglected. *The Stanmore* (1885), 10 P. D. 134, is an instance of the rule stated in the text.

(*i*) Except in the case mentioned in the last note. In *The Albis* (1895), 8 Asp. M. C. 92, it was held that the closing of the lights was not such an indication of risk as to make it necessary to stop and reverse.

(*j*) See *The Merthyr* (1898), 5 Asp. M. C. 475, and cases quoted under Art. 16.

course in ignorance of the position and course of the other ship is in itself a fault (*k*).

An alteration of the helm made for greater safety when there is no risk of collision will not be held to be a fault. A sailing ship (in 1856) seeing a green light from two to four points on her starboard bow, and distant about a mile and a-half, put her helm to starboard, and subsequently came into collision with the other ship. It was held that she was not in fault for starboarding (*l*).

Alteration for greater safety, where no risk.

It has been held that the vessels were approaching "so as to involve risk of collision" in the following cases:—Two steamships meeting on nearly opposite courses at a joint speed of eighteen or nineteen knots, and distant a mile and a-half (*m*); a steamship and a sailing-ship, distant two or three miles, and meeting at a joint speed of seventeen knots, the steamship not being able to make out the course of the sailing-ship, but knowing that it was probably nearly opposite to her own (*n*); a steamship two points on the quarter of another and overtaking her, distant a mile or less than a mile (*o*); a steamship overtaking another upon a converging course, and distant three miles (*p*). Where two sailing vessels were approaching each other on courses only half a point from being directly opposite, at a joint speed of twelve knots, and distant from each other two or three miles, it was held by the Supreme Court of the United States that there was risk of collision (*q*).

Cases in which there was "risk of collision."

In *The Banshee* (*r*), a steamship was going seventeen knots in Dublin Bay, and overtaking another going ten or twelve. The latter was 800 yards ahead, and the overtaking vessel was going in such a direction as to pass within a ship's length of her. It was held that there was no risk of collision, and

(*k*) *The Vindomora* (1889), 14 P. 172; *affd.* in H. L., (1891) A. C. 1. *The Resolution* (1889), 6 Asp. M. C. 363, is not to the contrary. See *per* Lord Herschell, (1891) App. Cas. 4. So in America: *The Umbria*, 166 U. S. Rep. 404.

(*l*) *The Sylph* (1857), Swab. 233; see also *The Franconia* (1877), 2 P. D. 8, 13. But see *The Corsica*, 9 Wall. 630.

(*m*) *The Jesmond* and *The Earl*

of Elgin (1871), L. R. 4 P. C. 1.

(*n*) *The Bougainville* and *The James C. Stevenson* (1874), L. R. 5 P. C. 316.

(*o*) *The Franconia* (1877), 2 P. D. 8.

(*p*) *The Seaton* (1884), 9 P. D. 1.

(*q*) *The Nicholls*, 7 Wall. 656. And see *The Cayuga*, 14 Wall. 270.

(*r*) 6 Asp. M. C. 221. The facts as stated in the text are taken from the judgment of Lord Esher.

that the leading ship was not in fault for not keeping her course. *Sed qu.*

When the
"meeting,"
or "crossing"
rule applies it
continues to
be applicable
until the risk
is determined.

When two ships are approaching each other with risk of collision, the rule of the road applies once and for all to take them clear. A ship is never required by the regulations, after having sighted another, to alter her course first to starboard and then to port; or, first to keep her course, and then to keep out of the way; or *vice versâ*. In the case, for example, of steamships meeting end on, or nearly so, each is required to alter her course to starboard. If, while under the port-helm, the relative positions and heading of the ships are changed, so that from meeting ships they become crossing ships, the "meeting" rule does not cease to operate, or give place to the "crossing" rule. The manœuvre of porting must be persisted in until the risk of collision is determined. If porting will not take the ships clear, Art. 23 or Art. 27 may apply and the engines may be stopped, or any other step taken which is necessary to avert collision; but the ships cannot afterwards, and whilst the risk continues, become crossing ships. If once a ship is within the "meeting" rule or any other rule requiring her to take or keep a definite course, or requiring her to keep out of the way, she cannot, whilst the risk continues, come within the operation of the "crossing" rule, or any other rule requiring her to adopt a different manœuvre. The object of the rule of the road and of the regulations would be entirely frustrated if it were possible for a ship to be thrown from one rule to another; if, whilst in the act of obeying one Article, she was suddenly to come within the operation of another Article, requiring her, perhaps, to take an exactly opposite course, and so making the previous manœuvre of no effect. Thus, *The Molière*, overtaking *The Baines Hawkins*, brought the side lights of the latter into view as she drew up abreast. It was held that this did not bring into operation the "crossing" rule, and that *The Molière* was an overtaking ship until she passed clear of *The Hawkins* (s). So a crossing ship cannot, by getting ahead or across the bows of the other, make the latter an overtaking ship (t).

Regulations
apply until

Where, by the action of the helm in accordance with the

(s) *The Molière*, (1893) P. 217.

(t) *The State of Texas*, 20 Fed. Rep. 254.

regulations, risk of collision has apparently been determined, but in fact it continues, and the risk again becomes apparent, the regulations are not complied with unless the steps required by them to be taken are taken and persisted in up to the time of collision or until the ships are clear. Thus where, by porting, a steamship, A., shut in the green of B., a steamship which had been approaching her with all her lights showing, and shortly afterwards, owing to the perverse starboarding of B., her green again became visible to A., and thereupon A. again ported and again shut in B.'s green, but B. continued to starboard, and again showed her green to A.; though A. ported a third time, it was held that she was in fault, because she did not stop and reverse when B. (u) showed her green for the third time.

risk finally
determined,
or ships clear.

A vessel sailing upon a voyage that may not be terminated until a regulation as to lights or fog-signals comes into force, and which is enacted, but not in force, when she sails, must, if possible, be provided with fog-signals, lights and whatever is necessary to enable her to comply with the regulation when it comes into force (x).

Ship to be
provided with
required
appliances.

THE REGULATIONS.

The following are the regulations made by the Order in Council of 13th October, 1910, under the Merchant Shipping Act, 1894, s. 418. At the present date there are a few foreign countries to the ships of which they have not yet been applied (y). The existing regulations are substantially the same as those of 1884 and 1897, including Art. 9 of 1897, which came into force on the 1st May, 1906, and embody the alterations made by Order in Council of 7th July, 1897; certain new notes are also added to Arts. 9 and 15. Many of the cases cited below arose under the earlier regulations, but are, it is submitted, binding authorities upon the points for which they are cited as to the construction and effect of the existing regulations (z). The Regulations of

(u) *The Arratoon Apar* (1889),
15 App. Cas. 37.

(y) See above, p. 298, note (f).

(x) *The Love Bird* (1881), 6
P. D. 80.

(z) Cf. *per* James, L. J., L. R.
5 Ch. 706: "Where once certain

1880 will be found L. R. 4 P. D. p. 241; those of 1884, L. R. 9 P. D. p. 247; and those of 1897 in L. R. (1896) P. p. 307.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.
PRELIMINARY.

These rules shall be followed by all vessels upon the high seas, and in all waters connected therewith, navigable by sea-going vessels.

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The words "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules, when she is not at anchor, or made fast to the shore or aground.

This Article is identical with the Preliminary Article of the regulations of 1897, and corresponds with Art. 1 of 1884. The paragraph defining the local application of the regulations, and those providing for electric and other modes of propelling ships and defining the term "under way," were added in 1897.

The words applying the regulations in all waters connected with the high seas navigable by sea-going vessels must be read in connection with Art. 30, which preserves the effect of local rules. The express application of the sea regulations to all waters connected with the sea has given rise to difficulty (see p. 299, *supra*).

The regulations contain no definition of a "sailing vessel"; nor would any definition have been necessary had not Art. 26 distinguished a "sailing vessel" from "sailing vessels . . . fishing with . . . trawls." This distinction creates a cross classification, and may lead to difficulty in

words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them, without any alteration, in a subse-

quent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given them."

construing Arts. 17, 20, and 24. A fishing vessel normally navigated by steam power, but slowly moving ahead under sail with her engines stopped, though ready for immediate use, while shooting her nets, was held to be a steam fishing vessel within Art. 9 (a).

Under former regulations it was held that a steam tug with her engines idle and her fires banked was "under steam" and required to keep out of the way of a sailing-ship (b); but if she were hove-to under canvas, it would seem that she would be treated as a sailing vessel (c).

A steamship in tow, whether under steam or not, is required by Art. 5 to carry her side lights; and this appears to have been the practice apart from the regulations (d).

As to the meaning of "under way" and "at anchor," see the cases cited under Arts. 2 and 11.

As to the application of the regulations to vessels which are not "ships," see p. 302, *supra*.

RULES CONCERNING LIGHTS, &C. ,

Article 1.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

ARTICLE 1.

The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

This Article is identical with Art. 1 of the Regulations of 1897, and corresponds with Art. 2 of 1884. A similar Article first appeared in 1863. The words "no other lights which may be mistaken for the prescribed lights" were in

(a) *The Pitgavenny*, (1910) P. 215.

(b) *The Jennie S. Barker and The Spindrift* (1874), L. R. 4 A. & E. 456; *The Bloomfield* (1905), 10 Asp. M. C. 194. The report of this case in Mitch. Mar. Reg. states that the tug had no canvas set. *The Sunnyside*, 1 Otto, 208, is a similar decision of the U. S. Supreme Court. As to a sailing-sloop with an auxiliary naphtha-

engine, see *The Captain Weber*, 89 Fed. Rep. 957. As to the duty of a tug without steam to get way on her, see *The Byron*, 2 New South Wales L. R. Ad. 1.

(c) *The Helvetia* (1868), 3 Asp. M. C. 43, note; considered and explained in *The Bloomfield* (1905), 10 Asp. M. C. 194.

(d) *The American and The Syria* (1874), L. R. 6 P. C. 127.

Article 1.

1897 substituted for "no others" in earlier regulations. They were probably inserted in consequence of a question which arose under former regulations, as to the legality of using a flare to attract the attention of a vessel coming dangerously near the vessel using the flare (*e*). The use of the flare and of detonating signals in such a case is expressly authorized by the existing regulations, Art. 12.

It appears that by the maritime law there was no obligation upon a ship to carry a light at night. It depended upon the darkness of the night, and other circumstances, whether a light was necessary or not (*f*). Up to 1852, sailing ships did no more than exhibit a light as occasion required, and then were only obliged to carry an anchor light, though steamships were in 1848 required to carry lights as at present.

Showing
lights other
than pre-
scribed lights.

The rule in its present form would clearly seem to authorise the use of lights for ship's use, though visible outboard, provided they do not interfere with the regulation lights. A vessel will not be held in fault for showing an extra light to an approaching vessel, provided it cannot be mistaken for a prescribed light. So, before a light was prescribed by law for a ship ashore (*g*), or being overtaken at night by a ship that appears not to see her, it was held that a ship was not in fault for showing over her stern to an approaching vessel a flare or one of her side lights (*h*); and that there was no duty cast upon a vessel being overtaken to show any light astern; until it became clear that the overtaking ship was not keeping out of the way (*i*). So in the case of a ship sunk (*k*) in a navigable channel, or casting off from her moorings (*l*), it was held that she was not wrong in exhibiting a light, though not required to do so by law. A

(*e*) See *The Simla* and *The City of Lucknow*, Ship. Gazette, 8th March, 1884; *The Merchant Prince* (1885), 10 P. D. 139; *The Narragansett*, 20 Blatchf. 87; *The Eleonora*, 17 Blatchf. 88.

(*f*) *The Victoria* (1849), 3 W. Rob. 49; *The Iron Duke* (1845), 4 Not. of Cas. 585; *The London-derry* (1845), *ibid.* Suppl. xxxi. But see *contra*, per Dr. Lushington in *The Saxonia* (1862), Lush. 410, as to a vessel at anchor.

(*g*) *The Industrie* (1872), L. R.

3 A. & E. 303; *The Thomas Lea* (1876), 3 Asp. M. C. 260.

(*h*) *The Anglo-Indian* (1875), 3 Asp. M. C. 1; *The Merchant Prince* (1885), 10 P. D. 139; not followed in *America*; *The Algiers*, 38 Fed. Rep. 526.

(*i*) *The Jane Bacon* (1879), 27 W. R. 35.

(*k*) *The Douglas* (1882), 7 P. D. 151.

(*l*) *The John Fenwick* (1872), L. R. 3 A. & E. 500.

vessel not showing a warning light, where none is prescribed, may be held at fault for lack of good seamanship (*m*).

Article 1.

The duty of lighting sunken ships and wrecks is, under certain circumstances, cast upon the harbour or lighthouse authority of the district (*n*), but in certain circumstances the owner may be liable (*o*). Care should be taken that the lights used for this purpose are not such as may mislead other vessels. In an unreported case (*p*), a collision with a wreck was caused by the wreck being lit with two vertical white lights, which were mistaken for those of a tug.

Lights on wrecks.

It is the duty of a ship that has lost her lights by bad weather or other accident to replace them as soon as possible (*q*).

If lost must be replaced.

It is no excuse for not carrying the regulation lights that they were being trimmed or went out by accident (*r*).

Lights being trimmed.

A wrong light or a light in a wrong position will cause the ship carrying it to be held in fault, if it misled the other ship. It is an infringement of Art. 1, and therefore, before the Maritime Conventions Act, 1911, it was not necessary for the latter to prove that she was in fact misled (*s*). Now proof of a breach of the regulations probably casts the burden of proving that the collision was not in fact caused by the breach upon those guilty of the breach (*t*). In the case of a light carried in a wrong place, it lies upon those who are admittedly in fault in respect of the light to make out beyond all doubt that the light was in such a position that it must have been seen (*u*).

Misleading lights.

(*m*) *The St. Aubin*, (1907) P. 60; *The Anglo-Indian* (1875), 3 Asp. M. C. 1; *The John Fenwick* (1872), L. R. 3 A. & E. 500; *The Philotaxe* (1877), 3 Asp. M. C. 512; *The Industrie* (1871), L. R. 3 A. & E. 303; *The Thomas Lea* (1876), 3 Asp. M. C. 260.

(*n*) See the Removal of Wrecks Act, 1876 (40 & 41 Vict. c. 16), and the various local Acts. *Dormont v. Furness Rail. Co.* (1833), 11 Q. B. D. 496, was a case where the duty was held to be cast upon the local authority.

(*o*) See *supra*, Chap. III. p. 76 *seq.*

(*p*) Ad. Div. 1885.

(*q*) *The Saxonia* and *The Eclipse*

(1862), Lush. 410, 422; *The Aurora* and *The Robert Ingram* (1860), Lush. 327; *The Gray Eagle*, 1 Bissel, 476; 2 Bissel, 25.

(*r*) *The C. M. Palmer* and *The Larnax* (1874), 2 Asp. M. C. 94; *The Eclipse* and *The Saxonia*, *supra*; *The Victoria* (1849), 3 W. Rob. 49; *The Sylph* (1854), 2 Sp. 75. 85.

(*s*) *The Talbot*, (1891) P. 184; *The Nessmore*, 50 Fed. Rep. 616; *La Champagne*, 60 Fed. Rep. 299; *The Excelsior*, 39 Fed. Rep. 393.

(*t*) *The Fenham*, see *supra*, pp. 57, 60, 71.

(*u*) *The Gannet*, (1900) App. Cas. 234; this decision of the House of Lords appears to have been

Article 1.

Spare lights.

Notwithstanding the express terms of the regulations, that the lights shall be carried, it seems that a ship will not necessarily be held in fault for a collision caused by the absence of lights, or by improper lights, if the regulation lights have been destroyed, and there are no spare ones on board. The point, however, has not been expressly decided. A steamship at anchor, with her masthead light up instead of her proper riding light, was held free from blame. Her riding light had been broken shortly before the collision in a previous collision for which she was not in fault (*x*).

The duty to equip a ship with fog-signals before sailing upon a voyage, so that she may be able to comply with a regulation that is enacted, but not in force, when she sails, was insisted upon in *The Love Bird* (*y*). The same rule would apply to ship's lights.

Obscuration of lights.

The regulation lights must not be obscured in any way (*z*). A flare must not be burnt so as to blind them (*a*). If a steamship has the wind aft, so as to blow her smoke ahead and thereby obscure her lights, it is her duty to slacken and not go at full speed (*b*). Where a ship carried a bright light in her cabin, which showed on deck and obscured her side lights, and the other ship alleged that she mistook it for a riding light, the former was held in fault for the collision (*c*). Where a tow lashed alongside had hoisted her foresail so as to obscure the tug's side lights, both tug and tow were, in America, held in fault (*d*); so where the tug's side lights were obscured by a car float lashed alongside (*e*). Where a

based on principles of general application, not upon the statutory presumption of fault, which was then in force.

(*x*) *The Kjobenhavn* (1874), 2 Asp. M. C. 213. But see *The Sylph* (1855), 2 Sp. 75; *The Rob Roy* (1849), 3 W. Rob. 190; *The C. M. Palmer* (1874), 2 Asp. M. C. 94; *The Benares* (1884), 9 P. D. 16; for cases of ship's lights going out and misleading the other ship.

(*y*) 6 P. D. 80.

(*z*) For the effect of a temporary obscuration before the repeal of the statutory presumption of fault, see *The Duke of Buccleugh* (1889), 15 P. D. 86, 93, 94. *Quere*, if an occasional obscuration is a breach

of the regulations: *The Glamorgan-shire* (1888), 13 App. Cas. 454, 456.

(*a*) *The Sea Nymph of Chester* (1816), Holt, 34.

(*b*) *The Rona* and *The Ava* (1874), 2 Asp. M. C. 182.

(*c*) *The Ida* and *The Mary Ida*, Ad. Div. Feb. 5th, 1878.

(*d*) *The W. A. Levering*, 36 Fed. Rep. 511.

(*e*) *The Titan*, 23 Fed. Rep. 413; *Marshall v. The Conroy*, 2 Fed. Rep. 785; *The H. W. Hills*, 21 Fed. Rep. 727; *The Buffalo*, 50 Fed. Rep. 628. Cf. *The Seacaucus*, 34 Fed. Rep. 68; *The Manhasset*, 34 Fed. Rep. 408, *aliter*.

Article 1.

ship carried her lights aft, it was held in America that the burden was on her to show that they were not obstructed by the sails or ship's side (*f*).

The fact that it is only a short time after sunset, and fine and clear weather, does not relieve a ship from the obligation to carry lights. Under the Admiralty Regulations of 1852 as to lights it was held that "it is not to be said that because it was a bright night it was not necessary to obey the Act of Parliament" (*g*). By the existing regulations vessels are expressly required to carry them in all weathers. When, on account of bad weather, it is not possible to carry them fixed, Art. 6 may apply, and proper lights must be exhibited from the deck (*h*).

Lights to be always carried.

Special lights are required by local Acts and rules to be exhibited by barges, dredgers, and other craft in the Thames, Mersey, Clyde, Humber, Ouse, and Trent rivers, and in various other rivers, harbours, canals, and navigable waters (*i*). Private signal lights for vessels belonging to the same owner, and flash lights (*k*) for fishing-boats (*l*), and quarantine (*m*) lights (a lantern at the masthead, or in case of plague two lanterns), are also enjoined by statute when in sight of other ships or within two leagues of the United Kingdom. The signals for pilots (*n*) are, by day, the pilot jack or certain other flag or cone and ball signals; by night, a blue light or a flare shown over the bulwark for one minute. As to distress signals, see Art. 31, *infra*.

Special lights required by local rules.

In American, Swedish, and other foreign waters, and in some British and colonial waters, ships are required to carry lights other than those described in Art. 2.

A master or owner wilfully neglecting to carry lights in accordance with the regulations is guilty of a misdemeanour,

Consequences of not carrying lights to shipowner and master.

(*f*) *The Caro*, 23 Fed. Rep. 734.

(*g*) *The City of London* (1857), Swab. 245, 249.

(*h*) See *infra*, p. 328.

(*i*) For the Thames, Mersey, and other local regulations, see the Appendix, *infra*. As to local rules generally, see Art. 30, *infra*.

(*k*) Merchant Shipping Act, 1894, s. 733. Merchant Shipping (Convention) Act, 1914 (4 & 5 Geo. 5, c. 50), s. 6 (2). Liability from the use of registered private

signal lights is saved by Art. 13. A list of private signals registered by the Board of Trade is published officially.

(*l*) As to these, see Art. 9, *infra*.

(*m*) 6 Geo. 4, c. 78, ss. 8, 9. This Act appears to be still in force.

(*n*) See Ord. in Council of 29th June, 1900, made under the Merchant Shipping Act, 1894, s. 615; Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), ss. 39 (2), 60.

Article 1.

and punishable with a fine of 100*l.* or imprisonment for six months (o). And a ship proceeding to sea may be stopped, if she is not properly supplied with lights and screens, or if they are improperly placed (p). It has been held that, as regards third parties, the shipowner, and not the pilot, is responsible for proper lights being carried (q).

ARTICLE 2.

Article 2.

A steam vessel when under way shall carry:—

- (a) *On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.*
- (b) *On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.*
- (c) *On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a*

(o) Merchant Shipping Act, 1894, s. 419.

(p) *Ibid.* s. 420.

(q) *The Ripon* (1885), 10 P. D. 65.

character as to be visible at a distance of at least two miles. Article 2.

- (d) *The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.*
- (e) *A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in sub-division (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.*

This Article is identical with Art. 2 of the Regulations of 1897, and corresponds with Art. 3 of 1884. The present Article differs from the 1884 Article in language in a few cases and also in the following respects: (1) it applies to all steam vessels, whereas Art. 3 of 1884 applied to "sea-going steamships" only; (2) the provisions in sub-division (a) as to the position of the mast-head light in vessels without a foremast, and as to its height; (3) the provision in sub-division (e) for the optional carrying of a range light. The other lights prescribed have remained the same since 1848 (*r*).

By the preliminary Article a ship is defined to be "under way" when she is "not at anchor, or fast to the shore, or aground." So a ship fast to another that is moored or brought up, or to a buoy, boom, or other fixed object, would, it is submitted, be held not to be under way within the meaning of Art. 2. A ship getting her anchor is "under way" as soon as she ceases to be holden by and under the control of her anchor (*s*). A steam tug waiting for employ-

(*r*) Admiralty Regulations, 1848, for steam vessels. Coloured side lights were first prescribed for sailing vessels by the Admiralty Re-

gulations, 1858.

(*s*) *The Esk* and *The Gitana* (1869), L. R. 2 A. & E. 350. It seems that she is "at anchor"

Article 2.

ent and drifting in the sea (*t*), or lashed alongside and towing a ship up to her anchor (*u*), or ready to hold her if her anchor comes home (*x*), a ship riding to her chains with anchors unshackled (*y*), and a sailing ship hove to (*z*), are under way and required to carry side lights. A trawler hauling her trawl and stationary, and a steam drifter shooting her nets and moving ahead very slowly under sail, are under way, but not "proceeding" within Article 20 (*a*). So a ship riding to a sea anchor, or with her anchor off the ground, up and down, in deep water, would, it seems, be required to carry side lights (*b*).

A ship dropping or dredging with the tide, stern foremost, is under way and required by Art. 2 to carry her side lights (*c*); but a Thames sailing barge, with her mast lowered, was held not to be a "sailing vessel under way" within the meaning of the Thames Rules (*d*). Under former regulations there are contradictory decisions as to the duty of a vessel driving in the sea in an unmanageable state, with regard to carrying side lights (*e*). Such a case is now provided for by Art. 4. The phrase "under way" occurs also in that Article, and has been the subject of discussion in the House of Lords and elsewhere (*f*).

A steam vessel under sail, and not under steam, but with her funnel up, is a sailing ship (*g*), and must carry side lights and no mast-head light; but by Art. 14 she is required to carry in the daytime a black ball or shape.

whilst being towed up to her anchor, so long as the anchor is not broken out of the ground: *The Romance*, (1901) P. 15.

(*t*) See *The Jennie S. Barker* and *The Spindrift* (1875), L. R. 4 A. & E. 456.

(*u*) *The Romance*, (1901) P. 15.

(*x*) *The Devonian*, (1901) P. 221.

(*y*) *The Faedrelandet*, (1895) P. 205.

(*z*) *The Rosalie* (1880), 5 P. D. 245; *The City of London* (1857), Swab. 245; *The James* (1857), Swab. 60.

(*a*) *The Gladys*, (1910) P. 13; *The Pitgavenny*, (1910) P. 213.

(*b*) For cases on the meaning of "at anchor," see under Art. 11 at p. 342.

(*c*) *The Hollandia* and *The John*

Ormston (two steamships), Court of Appeal, 15th June, 1885; but under former regulations Dr. Lushington seems to have held otherwise. See *The Smyrna*, mentioned in *The George Arkle* (1860), Lush. 382, 385.

(*d*) *The Indian Chief* (1888), 14 P. D. 24; and see *The Juno* (1894), 7 Asp. M. C. 506.

(*e*) *The George Arkle* (1860), Lush. 382; *The Buckhurst* (1881), 6 P. D. 152.

(*f*) See *The P. Caland*, *infra*, p. 326.

(*g*) See preliminary Article, but a steam fishing vessel may continue to be a steam fishing vessel under Art. 9, though moving under sail only: *The Pitgavenny*, (1910) P. 215.

In America, under former regulations, a tug "at rest" (*h*), and a sailing ship hove-to (*i*), were held not to be under way. The decisions are contrary to the English cases; but the definition of "under way" contained in the existing regulations sets the matter at rest.

Article 2.

The lights must be so fixed that their range is such as is described in the Article. If they are liable to be unnecessarily obscured by the sails, rigging, or other part of the ship, they do not comply with the law (*k*). A ship whose side lights were fixed on the top of a galley, or deck house, seven feet high and six feet broad, so that each light was seven feet inboard from the ship's side, was held not to be in fault, the lights being properly screened and visible in the required directions (*l*). Side lights are not required to be fixed in any particular place, but must be visible as directed in the regulations (*m*).

The regulations as to the fitting of ships' lights.

Minute instructions are issued by the Board of Trade to their surveyors with regard to the fixing and construction of ships' lights. These instructions have not the force of law, so that a ship will not be held in fault for a collision merely because her lights are not fitted in accordance with them (*n*).

Board of Trade instructions as to ships' lights.

Although the requirements of Art. 2 are not exactly complied with, the ship guilty of the infringement will not be held to be in fault for a collision that was not caused by the infringement of the law. In *The Fanny M. Carvill* (*o*) it was held that the lights of the other ship not having in fact been seen across her bow, she was not in fault for the collision. And in *The Duke of Sutherland* (*p*) one of two

Slight infringement of the regulations may be immaterial.

(*h*) *The America*, 29 Fed. Rep. 304.

(*i*) *The Alfredo*, 32 Fed. Rep. 240.

(*k*) *The Tirzah* (1879), 4 P. D. 33; *The Magnet*; *The Duke of Sutherland*; *The Fanny M. Carvill* (1873), L. R. 4 A. & E. 417; *The Fanny M. Carvill* (on app.) (1874), 2 Asp. M. C. 565; *The Duke of Buccleugh*, (1891) App. Cas. 310; *The Circassia*, 53 Fed. Rep. 113.

(*l*) *The City of Carlisle* (1864), Br. & Lush. 363; *The Samuel H. Crawford*, 6 Fed. Rep. 906.

(*m*) *The Bougainville v. The Jas. C. Stevenson* (1873), L. R. 5 P. C.

316.

(*n*) *The Magnet*; *The Duke of Sutherland*; *The Fanny M. Carvill* (1875), L. R. 4 A. & E. 417.

(*o*) (1874), L. R. 4 A. & E. 417; on app. 2 Asp. M. C. 565. In *The Emperor* and *The Lady of the Lake* (1816), Holt, 37, Lord Chelmsford said that the regulations are satisfied only by a "close and literal adherence to what they prescribe." But see *The Fire Queen* (1887), 12 P. D. 147.

(*p*) (1874), L. R. 4 A. & E. 417. *The Duke of Buccleugh* (1890), 15 P. D. 86, was a similar case, the obscuration being by the foot of

Article 2.

ships in collision was held not to be in fault, although her side lights were partially obscured by the cathead, the obscuration not being such as would have prevented the other from seeing the former in time to avoid her if she had exercised proper skill. Again, in *The Chusan* (q), a trawler carrying a bright mast-head light in addition to side lights was held free from blame for collision with a steamer, on the ground that those on board the steamer not having seen the bright light, it could not possibly have contributed to the collision. The above cases were decided after 1873, when to escape liability it was necessary to prove that the infringement could not possibly have contributed to the collision.

Cases before
1873.

Before 1873, when, as now, the infringement of a regulation only imposed liability for damages when it contributed to the collision, a sailing ship was held not to be in fault, even upon the assumption that her side lights were so fixed in the mizzen rigging that they were not visible in the directions required by the regulations, it being proved that the other vessel, a steamship, might, by slackening her speed, and using proper care, have avoided her, notwithstanding the suggested insufficiency of her side lights (r). And in another case (s), where the screens of one ship were only a foot in length, and the side lights could be seen across the bow, it was held that she could recover against the other ship for a collision, it being proved that the lights were not in fact seen across the bow. Where the side lights were fixed to the pawl bitts, and the other ship alleged that she could not see them, it was held that the ship so carrying them was in fault for the collision (t).

Visibility
of lights.

It is not clear whether the distance at which the lights are to be visible is stated in statute or nautical miles. In the French regulations the distance is given as *deux milles*.

Inspection by
the Court.

The power of ordering inspection of a ship's lights, alleged

the fore sail, but the positions of the ships being such that it could not have affected the collision. Cp. *The Hermod* (1889), 6 Asp. M. C. 509.

(q) (1886), 5 Asp. M. C. 476.

(r) *The Bougainville v. The Jas.*

C. Stevenson (1874), L. R. 5 P. C. 316. See also *The Argo* (1900), 9 Asp. M. C. 74.

(s) *The Emperor v. The Lady of the Lake* (1864), Holt, 37, 202.

(t) *The New Ed v. The Gustav* (1864), 9 L. T. 547.

to be deficient, given to the judge of the Admiralty Court by statute (*u*), was exercised by Sir R. Phillimore in *The Magnet* (*x*). The Trinity masters having inspected them and found them visible for less than two miles, the ship was held in fault under the statute (*y*).

Article 2.

ARTICLE 3.

A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Art. 2 (a), except the additional light, which may be carried at a height of not less than fourteen feet above the hull.

Article 3.

Lights for
steam vessels
towing.

Such steam vessel may carry a small white light abaft the funnel or after-mast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

This Article is identical with Art. 3 of the Regulations of 1897, and corresponds with Art. 4 of 1884. The provisions as to (1) the distance between the lights, (2) the additional light where the tow exceeds 600 feet, and (3) the steering light, were inserted in 1897. The rule as to towing lights has in other respects remained substantially the same since 1863.

The distinguishing lights of the tug are "for the purpose of warning all approaching vessels that she is not in all respects mistress of her movements" (*z*), and to show that she is encumbered. It would seem that as soon as the tow line is fast, and so long as it is fast, the towing lights should be up. A tug fast alongside a ship at anchor and towing her

(*u*) 24 Vict. c. 10, s. 18.

(*x*) (1873), L. R. 4 A. & E. 417.

(*y*) In *The Duke of Buccleuch*, *ubi supra*, the Trinity Brethren inspected *The Vandalia*, with her sails set and her lights in position,

for the purpose of seeing the effect of the former in obscuring the latter.

(*z*) *The American* and *The Syria* (1874), L. R. 6 P. C. 127, 131.

Article 3.

up to her anchor (a), or ready to hold her up to her anchor if it comes home, or if the cable parts, must exhibit her towing lights and her side lights (b). A tug fast to a steamer, ready to tow when required, but not yet employed in towing, was held not to be required to give the fog signals of a tug under Art. 15 (c); on the same reasoning she should not exhibit towing lights.

The regulations contain no provision for lights to distinguish a sailing ship towing another vessel.

ARTICLE 4.**Article 4.**

Lights and signals for vessels not under command.

(a) *A vessel which from any accident is not under command shall carry at the same height as the white light mentioned in Art. 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all round the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other not less than six feet apart, where they can best be seen, two black balls or shapes each two feet in diameter.*

(b) *A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Art. 2 (a), and if a steam vessel, in lieu of that light, three lights in a vertical line one over the other, not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least two miles. By day she shall carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.*

(c) *The vessels referred to in this Article when not making*

(a) *The Romance*, (1901) P. 15.

(b) *The Devonian*, (1901) P. 221; so held by the Court of Ap-

peal. *Sed qu.*

(c) *The Sargasso*, (1912) P. 192.

Article 4.

way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Art. 31.

This Article is identical with Art. 4 of the Regulations of 1897, and corresponds with Art. 5 of 1884. There are certain verbal differences, and in the first paragraph two red lights are substituted for the three red lights of 1884. Not under command signals were first prescribed in 1880.

Steamboats of less than forty tons, steam launches, sailing and rowing crafts of less than twenty tons, and row boats are by Art. 7 exempted from the operation of Art. 4 (a).

The words of paragraph (a) applying the Article to a ship "which from any accident is not under command" would seem to be explained in paragraph (d) as meaning unable to get out of the way. In Art. 15 (e) the same words appear to be taken to mean unable to get out of the way or to manoeuvre as required by the rules. In the case of a vessel ashore in or near a fairway riding lights and the two red lights specified in this Article are prescribed by Art. 11, but no day-light signals. This Article has been held to refer to a ship afloat and moving, not to a ship hard and fast aground (d). There are therefore no signals prescribed (1) for a ship ashore in or near a fairway by day, (2) for a ship ashore anywhere else by day or night, yet a ship ashore would seem to answer to the description not under command and unable to get out of the way. In the ordinary course of navigation a ship is sometimes not under command; a steam or sailing ship hove-to in heavy weather, a sailing ship in a calin, a heavy ship in stays, a vessel with her anchor down but not holding, are common instances of such a case; but it is apprehended that Art. 4 does not apply in such circumstances, which cannot be said to be accidental (e).

(d) *The Carlotta*, (1899) P. 223.

(e) So held of a vessel dragging

Article 4.

"Making way through the water" appears to have a different meaning from "under way," which by the Preliminary Article is interpreted to describe a ship that is not at anchor, or made fast to the shore, or aground. The distinction between "under way" and "having no way on her" is strongly marked in Art. 15 (a) and (b).

Art. 4 does not in terms exclude the operation of the "meeting" and "crossing" and other rules of navigation, for vessels approaching each other with risk of collision. It appears, however, that a duty is cast upon a vessel falling in with another vessel exhibiting the red lights to keep out of the way of the latter, and upon the vessel exhibiting such lights to keep her course and speed (f).

The P. Caland (g) is an important decision upon the corresponding Article of the Regulations of 1884. A steamship, owing to a breakdown of one of her cylinders, was able to use one engine only, with which she was able to maintain a speed of from four to five knots. She had the red lights exhibited, but no side lights. In the House of Lords she was held in fault, both for exhibiting the red lights and for not exhibiting her side lights. In the Court below, Jeune, J., expressed the opinion that if a vessel is able to comply with the sailing rules for vessels approaching each other with risk of collision, she is not justified in exhibiting the red lights; and in the Court of Appeal Fry, L. J., took a similar view. In the Court of Appeal Lord Esher, M. R., said that a vessel that is, in fact, under command, is not justified in exhibiting the three red lights, merely because she may shortly be out of command. Lord Herschell, C., in the House of Lords, said that this was too narrow a view of the regulation, and that a steamship with her machinery in such a condition that she might at any moment be unable to keep out of the way of an approaching vessel would be justified in showing the three red lights, and not the less so because she was able to keep moving ahead; but that it must depend upon circumstances

through mud: *The Bellanoch*, (1907) A. C. 269. Also of a sailing ship hove to: *Burrows v. Gower*, 119 Fed. Rep. 616.

(f) *The Hawthornbank*, (1904) P. 120.

(g) (1893) App. Cas. 207; in the Court of Appeal, (1892) P. 191.

whether she is justified in moving ahead at all. Lord Article 4.
Watson concurred in this view of the law.

This decision has been followed in Scotland, where it was held that a steamship which by reason of injuries sustained in collision was unable to go at full speed, but whose engines and steering gear were intact, was not justified in exhibiting the "not under command" signals (*h*).

It may be observed that those in charge of an injured vessel may, in considering the advisability of exhibiting "not under command" signals, take into consideration the nature of the traffic with which they may expect to fall in. Thus, a sailing ship making from off Dover to the Downs, which, by reason of injuries, could only act slowly for other vessels, was held justified in exhibiting these signals, regard being had to the crowded nature of Channel traffic (*i*).

In *The Faedrelandet* (*k*) it was held that a steamship riding in the sea to her chains, with anchors unshackled, should exhibit the three red lights.

In *The Buckhurst* (*l*), a sailing ship parted from her anchors in a gale and drove over Cardiff sands, so that she injured her rudder and became unmanageable. She did not exhibit the three red lights, but it was held that she was not therefore to be held in fault, because the circumstances made a departure from the regulations necessary, and that the absence of the lights could not have contributed to the collision.

ARTICLE 5.

A sailing vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Art. 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry. Article 5.
Lights for
sailing ships.

This Article is identical with Art. 5 of the Regulations of 1897 and Art. 6 of 1884, and has remained substantially

(*h*) *William Cory & Son, Ltd.* P. 120.
v. *Kopajtis*, Sc. Law Rep. XLV. (*k*) (1895) P. 205.
216. (*l*) (1881), 6 P. D. 152.
(*i*) *The Hawthornbank*, (1904)

Article 5.

unaltered since 1858, when coloured lights for sailing ships were first introduced. Under the Admiralty Regulations of 1852 sailing ships were only required to exhibit a bright light to approaching vessels in time to avoid collision.

“Under way”
meaning of
the term.

“Under way” is defined in the Preliminary Article; see pp. 312, 319, *supra*, and the cases there cited. When a ship is under way she should always carry her side lights, except when not under command by accident and not making way within the meaning of Art. 4 (e). Thus a vessel coming to an anchor while hauling down her jibs, and having little or no way on her, was held to be right in carrying her side lights (*l*). So a ship with her anchor down, but not holding by it and unmanageable, was held to blame for not carrying her side lights (*m*). However, in a case where a vessel parted from her anchors and drove over a sand in an unmanageable state, owing to her rudder being disabled, it was held that there were special circumstances which made it necessary for her not to show her side lights, which would have been misleading to other vessels (*n*).

Barge being
towed.

A question may arise as to the lights to be carried by a dumb barge being towed in waters where no local rule on the point is in force. The power given by sect. 418 of the Merchant Shipping Act, 1894, is to make regulations as to the lights to be carried by ships. A dumb barge is not a “ship” as defined by sect. 742 (*nn*). Further, a dumb barge is seldom a “sea-going vessel” within the meaning of that expression in the Preliminary Article. That a barge being towed should show some light is a matter of good seamanship, but it does not seem certain she must carry the regulation side lights (*o*).

ARTICLE 6.

Article 6.

Special lights
for small
vessels.

Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use;

(*l*) *The Adriatic* (1875), 3 Asp. M. C. 16.

(*m*) *The George Arkle* (1861), Lush. 382.

(*n*) *The Buokhurst* (1881), 6 P. D. 152.

(*nn*) *Gapp v. Bond* (1887), 19

Q. B. D. 200; see also *The Owen Wallis* (1874), L. R. 4 A. & E. 175; *Everard v. Kendall* (1870), L. R. 5-C. P. 428.

(*o*) But see *The Lighter No. 3* (1902), 18 T. L. R. 322.

and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

Article 6.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

This Article is identical with Art. 6 of the Regulations of 1897, and almost identical with Art. 7 of 1884. Similar provisions have been in force since 1858.

It is not easy to see to what vessels the Article has application. Art. 10 provides for boats, and there are few craft other than boats in which side lights "cannot be fixed" and carried even in the worst weather, if properly fitted. It was assumed in a case in Ireland that a full-decked trawler of 41 tons cannot conveniently work her trawl with side lights fixed, and that such a vessel may carry them on deck, even in fine weather and when not at work (*p*). This can scarcely have been the intention of the framers of Art. 6.

What vessels may carry their side lights on deck.

If a vessel seeks to excuse herself for not having her side lights fixed in their proper place, the burden is on her to prove that the lights could not with safety be carried fixed. In the case of a brig of 255 tons (*q*), and in another case of a vessel of 239 tons (*r*), the Court appears to have doubted whether it was practicable in bad weather to carry them fixed in the usual places. It is submitted that such vessels would not come within the operation of Art. 6.

"In time to prevent collision"; the same words are used in Art. 9 (*d*), and have been held to impose no obligation to show the prescribed light until risk of collision exists (*s*).

In time to prevent collision.

(*p*) *The Margaret and The Tuscar* (1866), 15 L. T. 86.

(*q*) *The Livingstone* (1859), Swab. 519; see also *The Calla*, *ibid.* 465.

(*r*) *The Tirzah* (1879), 4 P. D. 33.

(*s*) *The Orion*, (1891) P. 307, 311; cf. *The Piéton*, (1910) P. 46; *The Algol*, (1918) P. 7.

ARTICLE 7.

Article 7.
Lights for
small craft.

Steam vessels of less than forty, and vessels under oars or sails of less than twenty, tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Art. 2 (a) (b) and (c), but if they do not carry them they shall be provided with the following lights:—

1. *Steam vessels of less than forty tons shall carry—*

(a) *In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in Art. 2 (a), and of such a character as to be visible at a distance of at least two miles.*

(b) *Green and red side lights constructed and fixed as prescribed in Art. 2 (b) and (c), and of such a character as to be visible at a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lantern shall be carried not less than three feet below the white light.*

2. *Small steamboats, such as are carried by seagoing vessels, may carry the white light at a less height than nine feet above the gunwale, but it shall be carried above the combined lantern, mentioned in sub-division 1 (b).*

3. *Vessels under oars or sails, of less than twenty tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.*

4. *Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.*

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Art. 4 (a), and Art. 11, last paragraph.

Article 7.

This Article first appeared in the Regulations of 1897, and is unaltered.

A rowing boat is not a "ship." Therefore *quære* if there is power to make regulations as to the lights to be carried on such craft. See *sub* "Barge being towed," *supra*, p. 328. It may, however, be held that it is bad seamanship not to comply with the regulations.

ARTICLE 8.

Pilot vessels, when engaged on their station on pilotage duty shall not show the lights required for other vessels, but shall carry a white light at the mast-head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

Article 8.

Lights for
pilot boats.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the mast-head, and may, instead of the coloured lights above mentioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

A steam pilot vessel exclusively employed for the service of pilots licensed or certified by any pilotage authority or the Committee of any pilotage district in the United Kingdom when engaged on her station on pilotage duty and in British waters and not at anchor shall in addition to the lights required for all pilot boats carry at a distance of eight feet below her white mast-head light a red light visible all round the horizon and of such a character as to be visible on

Article 8.

a dark night with a clear atmosphere at a distance of at least two miles and also the coloured side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty and at anchor she shall carry in addition to the lights required for all pilot boats the red light above mentioned but not the coloured side lights.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

This Article is in substance identical with Art. 8 of the Regulations of 1897, except that "and in British waters" have been omitted from the fifth paragraph, and corresponds (with additions) with Art. 9 of 1884. The lights prescribed in the first paragraph have been the regulation lights for pilots since 1858.

It has been held that a pilot boat in tow of the ship to which she had supplied the pilot was in fault for carrying her mast-head light (*t*).

A boat serving ships with pilots would seem to be a "pilot vessel" whether the pilots held licences or not (*u*).

A pilot vessel, within the limits of her station, is "engaged on her station on pilotage duty," not only whilst she is actually putting a pilot on board or taking him out of a ship, but whilst she is cruising or at anchor and on the look-out for ships. Unless, however, she is engaged in one of these ways, the fact that she is within the geographical limits of her station will not bring her within the definition (*x*).

The words of the first paragraph, "shall not show the lights required for other vessels," would seem to forbid the use by pilot boats of the stern light of Art. 10.

In America, a ship that ran down the boat from which she was taking her pilot was held alone in fault, though the pilot boat had a wrong light; but in another case the pilot boat was held to be in fault for not complying with the regulations whilst she was approaching the vessel she had served in

(*t*) *The Mary Hounsell* (1879),
4 P. D. 204.

(*u*) See *The Mary Hounsell*,
supra.

(*x*) *The Reginald*° (1907), 10
Asp. 519; *The Leo*, 34 Fed. Rep.

140.

Article 8.

order to pick up her skiff (*y*). In a case where two competing pilot boats (a steamer and a schooner) collided, it was held that neither was in fault (*z*).

The object of the special lights for a pilot boat is, not only to apprise other vessels of the presence of a pilot, but also to enable them to keep clear of her (*a*).

It has been held in America that it is no breach of the regulations, nor is it negligence, not to answer a pilot-boat's flare (*b*). Where a sailing ship by burning a flare in answer to a steamship's blue light misled the latter into thinking that she was a pilot-boat, the sailing ship was held in fault (*c*). The duty of a steamship to stop when taking her pilot on board has been insisted on (*d*).

As to signals for ships wanting pilots, see above, p. 317.

. ARTICLE 9.*†

Article 9.

Fishing-vessels and fishing-boats, when under way and when not required by this Article to carry or show the lights hereinafter specified shall carry or show the lights prescribed for vessels of their tonnage under way.

(*a*) *Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night with outlying tackle extending not more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light.*

Open boats, when fishing at night, with outlying tackle extending more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show

* *This Article does not apply to Chinese or Siamese vessels.*

† *The expression "Mediterranean Sea" as contained in sections (b) and (c) includes the Black Sea and other adjacent inland seas in communication with it.*

(*y*) *The City of Washington*, 2 Otto, 31.

(*z*) *The Pilot*, 20 Fed. Rep. 860.

(*a*) *The Haverton*, 31 Fed. Rep. 563.

(*b*) *The Cambusdoon*, 30 Fed. Rep. 704.

(*c*) *The Wisconsin*, 23 Fed. Rep. 283, affirming 23 Fed. Rep. 831.

(*d*) *The Columbia*, 27 Fed. Rep. 704.

Article 9.

a second white light at least 3 feet below the first light and at a horizontal distance of at least 5 feet away from it in the direction in which the outlying tackle is attached.

- (b)* Vessels and boats, except open boats as defined in sub-division (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than 6 feet and not more than 15 feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea† sailing fishing-vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

- (c) Vessels and boats, except open boats as defined in sub-division (a), when line-fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of sub-division (h), shall carry the same lights as vessels fishing with drift-nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.

* Dutch vessels and boats when engaged in the "kol," or hand-line, fishing will carry the lights prescribed for vessels fishing with drift nets.

† Also as regards Russian vessels, in the seas (excluding the Baltic) bordering the coasts of Russia.

Article 9.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing-vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

- (d) *Vessels, when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—*

1. *If steam-vessels, shall carry in the same position as the white light mentioned in Art. 2 (a), a tricoloured lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 nor more than 12 feet below the tricoloured lantern a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.*

2. *If sailing-vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.*

All lights mentioned in sub-division (d) 1 and 2 shall be visible at a distance of at least 2 miles.

- (e) *Oyster dredgers and other vessels fishing with dredge-nets shall carry and show the same lights as trawlers.*
- (f) *Fishing-vessels and fishing-boats may at any time use a flare-up light in addition to the lights which they are by this Article required to carry and show, and they may also use working lights.*

Article 9.

- (g) *Every fishing-vessel and every fishing-boat under 150 feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile.*

Every fishing-vessel of 150 feet in length or upwards, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by Article 11.

Should any such vessel, whether under 150 feet in length, or of 150 feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least 3 feet below the anchor light, and at a horizontal distance of at least 5 feet away from it in the direction of the net or gear.

- (h) *If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day signal required by sub-division (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain-storms make the signal prescribed for a vessel at anchor. (See sub-division (d), and the last paragraph, of Article 15.)*
- (i) *In fog, mist, falling snow, or heavy rain-storms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag-net, and vessels line fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively, at intervals of not more than one minute make a blast; if steam-vessels, with the whistle or syren, and if sailing-vessels, with the fog-horn; each blast to be followed by ringing the bell. Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.*

(k) *All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.*

Article 9

The vessels required by this Article to carry or show the lights hereinbefore specified shall not be obliged to carry the lights prescribed by Article 4 (a), and the last paragraph of Article 11.

This Article is identical with Art. 9 of the Regulations of 1897 (except for the notes) and came into force on the 1st May, 1906, and took the place of Art. 10 of the Regulations of 1834 and the Orders in Council which amended it. It provides a complete code in regard to fishermen's lights and supersedes the various Acts of Parliament and Orders in Council which formerly controlled the rights of fishing-vessels to which Art. 10 of 1884 did not apply (e).

A fishing-vessel encumbered with her nets or her trawl is not mistress of her movements, and cannot keep out of the way of an approaching vessel, as she could if she were unencumbered. The signals she is directed to exhibit are to warn approaching vessels of her condition, and it is the duty of an approaching unencumbered vessel, whether under sail or steam, on seeing the warning signal to keep out of the way, although by the sailing and steering rules it would be her duty to keep her course and speed. Conversely, it is the duty of the encumbered fishing-vessel to keep her course and speed, instead of keeping out of the way (f). By Art. 26 sailing-vessels are directed to keep out of the way of sailing-vessels

Other vessels must keep out of the way of encumbered fishing vessels.

(e) The Acts and Orders referred to in the text are as follows:—6 & 7 Vict. c. 79; 25 & 26 Vict. c. 63; 31 & 32 Vict. c. 45; 38 Vict. c. 15; 40 & 41 Vict. c. 42; 46 & 47 Vict. c. 22; Orders in Council of the following dates: 9th January, 1863; 6th January, 1869; 14th August, 1879; 24th March, 1880; 26th August, 1881; 18th August, 1882; 23rd August, 1883; 2nd

February, 1884; and a notice pursuant to 46 & 47 Vict. c. 22, s. 29, 17th November, 1888 (as to Danish boats), dated 26th March, 1884 (as to the Sea Fisheries Act, 1883).

(f) *The Ragnhild*, (1911) P. 254; *The Grovehurst*, (1910) P. 316; *The Pitgavenny*, (1910) P. 215; *The Picton*, (1910) P. 46; *The Gladys*, (1910) P. 13; *The Upton Castle*, (1906) P. 147; *The King's*

Article 9.

fishing with nets, lines or trawls, but there is no Article expressly directing sailing-vessels to keep out of the way of steam fishing-vessels while fishing or steam vessels to keep out of the way of steam vessels while fishing. It has been held, however, that such is the law in the case of fishing vessels exhibiting the signals prescribed by this Article (*g*). The rule as to the position of the second light indicating the position of the nets should be observed strictly (*h*).

When the fishing signals should be shown.

A vessel shooting lines or fishing with towing lines is required by section (c) to carry the ordinary regulation lights only, but a drifter shooting her nets (*i*) or a trawler shooting her trawl (*k*) is required to carry the special lights. A trawler hauling in her trawl, or with her trawl on deck about to shoot it again on the same ground (*l*), is "engaged in trawling," but she must not steam or sail at an accelerated speed (*m*). A drifter about to shoot her nets, and still unencumbered in her movements, may be held not to be "fishing with drift nets." A drifter who has quitted her nets (*n*), or a trawler who is on her way to another spot to trawl (*o*), should lower her fishing lights and carry the ordinary under way lights.

Former option as to lights.

Under the present Article the option which was formerly given to trawlers in respect of lights, and which caused difficulties (*p*), has been withdrawn. Under the Orders in Council, by which this option was conferred, a trawler was authorised to show either extraordinary lights indicative of her employment or else the ordinary under way lights. It was judicially held that if the trawler had sufficient way on her to act with effect for an approaching ship, then it was her duty to exhibit the ordinary under way lights. If, however, she had no more than just steerage way and had therefore

County (1904), 20 T. L. R. 202; *The Tweedsdale* (1889), 14 P. D. 164; *The Dunelm* (1884), 9 P. D. 164; *The Englishman* (1877), 3 P. D. 18.

(*g*) *The Gladys*, (1910) P. 13; *The Pitgavenny*, (1910) P. 215; *The Grovehurst*, (1910) P. 316; *The Ragnhild*, (1911) P. 254.

(*h*) *The Pitgavenny*, (1910) P. 215.

(*i*) *Ibid.*

(*k*) *The Cockatrice*, (1908) P. 182.

(*l*) *The Picton*, (1910) P. 46;

The Cockatrice, *ubi supra*.

(*m*) *The Skrim* (1914), 30 T. L. R. 555.

(*n*) *The Cockatrice*, *ubi supra*.

(*o*) *The Upton Castle*, (1906) P. 147.

(*p*) *The Dunelm* (1881), 9 P. D. 164; *The Tweedsdale* (1889), 14 P. D. 164; *The Upton Castle*, (1906) P. 147; see also *The Robert and The Ann* (1864), Holt, 55; *The Englishman* (1878), 3 P. D. 18; *The Edith*, Ir. Rep. 10 Eq. 345.

little power of keeping out of the way of another vessel, then Article 9.
it was her duty to show the extraordinary lights (*q*).

The white flare-up light to be shown by sailing-trawlers on the approach of other vessels is to be shown "in sufficient time to prevent collision." Jeune, J., has held similar words only to apply when the vessels "are approaching one another under such circumstances that there exists a risk of collision" (*r*). Flare-up light.

The duty upon steam-trawlers to sound fog-signals is now beyond doubt (*s*). Fog signals.

ARTICLE 10.

A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light. Article 10.
Light for overtaken ship.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, viz., for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side lights.

This Article is identical with Art. 10 of the Regulations of 1897, and corresponds with Art. 11 of 1884. The paragraph describing the position, fixing, and range of the stern light was added in 1897. It was inserted in consequence of decisions which threw doubt upon the legality of so carrying it (*t*). There were decisions, on former regulations, against the side light and the stern light showing at the same time (*u*).

Before the Regulations of 1880, which first provided for a stern light, there had been doubt as to whether it was not

(*q*) *The Tweedsdale*, *supra*, at 73; *The Essequibo* (1888), 13 P. D. 51; and see *The Breadalbane*

(*r*) *The Orion*, (1891) P. 307 at 311. See *The Picton*, (1910) P. 46. (1882), 7 P. D. 186; *The Pacific* (1884), 9 P. D. 124; *The Stakesby* (1890), 15 P. D. 166.

(*s*) Under the Regulations of 1884 the application of Art. 10 to steam-trawlers was questioned: *The London*, (1904) P. 355. (*u*) *The Hubbuck*, Ad. Div. 28th June, 1887; *The Palinurus* (1888), 13 P. D. 14; *The Fire Queen* (1887), 12 P. D. 147.

(*t*) *The Imbro* (1889), 14 P. D.

Article 10. contrary to the regulations to show a light astern to an overtaking vessel (x).

Stern light to be shown, though no risk of collision.

The application of Art. 10 is not limited, as are the steering and sailing rules, to cases where there is risk of collision. It applies where the ship astern is broad on the quarter, and is broadening, so long as she is overtaking the ship ahead. And it is not necessary that she should be on a course such that there is or will be risk of collision (y), for she may alter her course.

When the duty arises.

The duty to exhibit the stern light "does not arise till the vessel which is being overtaken has had an opportunity of seeing that the vessel which is overtaking her is a vessel coming nearer to her, and that she is approaching upon such a course that she cannot see the lights of the overtaken ship. When the overtaking ship is seen to be thus approaching, then the duty arises to give the specified warning within a reasonable time, to afford an opportunity to the other vessel to keep out of the way" (z).

When it ceases.

It was held, in an early case (a) under this Article, that, after risk of collision had apparently ceased, the obligation to exhibit the stern light also ceased. But this decision was overruled in *The Main* (y). When the stern light is not a fixed light it must be shown so long as the ship from which it is shown is being overtaken (b).

Overtaking vessel: definition.

Article 24 contains the definition of an "overtaking" vessel. "Every vessel coming up with another vessel from any direction more than two points abaft her beam" is overtaking the other. This definition, though framed, apparently, for the purpose of distinguishing an overtaking from a cross-

(x) See *The City of Brooklyn* (1876), 1 P. D. 277; *The Anglo-Indian* (1876), 3 Asp. M. C. 1; *The Lena* (1866), 14 L. T. 675; *The John Fenwick* ((1871), L. R. 3 A. & E. 500; *The Earl Spencer* (1874), L. R. 4 A. & E. 431; aff. 2 Asp. M. C. 523; *The Oder*, 13 Fed. Rep. 272; *aliter The Cybele*, 5 Quebec L. R. 262.

(y) *The Main* (1886), 11 P. D. 132.

(z) *Per* Lord Herschell, *The Main* (1886); 11 P. D. 132, 136.

(a) *The Leihar* (1881), 4 Asp. M. C. 478. A smack hove-to observed the three lights of a steam-

ship coming up with her astern. She showed her stern light until the steamship shut in her green, and then she ceased to show the light. The steamship then altered her helm again and ran into the smack. It was held (wrongly) that the smack, having exhibited her light until risk of collision was apparently determined, had complied with Art. 11, and was free from blame.

(b) See *per* Hannen, P., *The Essequibo* (1888), 13 P. D. 51, 53; followed in *The Basset Hound* (1894), 7 Asp. M. C. 467.

ing vessel within the meaning of Arts. 24 and 17 respectively, Article 10.
would probably be held to apply to Art. 10.

A smack hove-to is "being overtaken" by another coming up with her astern, and is required to show the stern light (c). It would seem that to be an "overtaken" ship within the meaning of Art. 10, the ship must be under way; that a vessel at anchor is not required to show the stern light; and that a sailing ship beating to windward across the bows of a steamship, with her side light visible to the steamship, is being overtaken by the steamship when she puts her helm down to go about, and must show the stern light.

Overtaken
ship:
definition.

Art. 10 imposes upon those in charge of a ship the duty of keeping a look-out astern, and a ship will be held in fault if she were struck by an overtaking ship to which she had not shown a stern light, when she might have shown it (d).

Look-out
astern.

The binnacle light, although visible astern, is not such a light as is required by Art. 10 (e).

Binnacle
light.

In *The Pacific* (f) a smack was held in fault for exhibiting no light or flare to a steamship which overtook and ran into her. The smack had her trawl down, and was carrying, suspended from her weather cross-tree, a white light in a globular lantern. It was held that the light did not comply with the law.

Fisherman's
light.

Whether a pilot boat may use the stern light seems doubtful. See *supra*, p. 332.

ARTICLE 11.

A vessel under 150 feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least one mile. Article 11.

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height not less than 20, and not exceeding 40, feet above the hull, one such light, and at or near the stern of the vessel, and at

(c) *The Reiher* (1881), 4 Asp. M. C. 478.

(d) *The Main* (1886), 11 P. D. 132; *The Imbro* (1889), 14 P. D. 73; *The Marion*, 56 Fed. Rep. 271;

Kennedy v. The Sarmatian, 2 Fed. Rep. 911.

(e) *The Breadalbane*, *ubi supra*; *The Patroclus* (1888), 13 P. D. 54.

(f) (1884), 9 P. D. 124.

Article 11. *such a height that it shall be not less than 15 feet lower than the forward light, another such light.*

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Art. 4 (a).

This Article is identical with Art. 11 of the Regulations of 1897, and corresponds with Art. 8 of 1884. The provisions as to a second riding light, and as to ships ashore in a fairway, were added in 1897 (*g*). A riding light was first enforced by regulation in 1848.

In *The Saxonia* (*h*), it was said by Dr. Lushington that, by the general law of the sea, a vessel at anchor, or a fishing-boat at work, is bound to carry a light, so as to enable vessels under way, whose duty it is to avoid her, to have an opportunity of doing so. But as to ships under way, there are decisions that by the maritime law they were not bound always to carry a light. Probably it would be held that at the present day the common law of the sea, in other words ordinary care and seamanship, apart from the regulations, requires a light in all cases.

“At anchor”;
meaning of
the phrase.

The exact meaning to be attached to the words “at anchor” has been the subject of controversy. By the Preliminary Article of the regulations (*supra*, p. 312), “at anchor” is opposed to “under way,” and is also distinguished from “made fast to the shore” and “aground.” Various cases have revealed circumstances in which vessels have been held *not* to have been “at anchor” within the Article.

Thus a tug lashed alongside and towing a ship up to her anchor (*i*) is not herself at anchor, nor a tug ready to hold a ship if her anchor comes home (*k*), nor a vessel with her anchor down which is not in fact being held to or controlled by her anchor (*l*), nor a ship dropping or dredging stern foremost with her anchor a-trip (*m*), nor a vessel riding to her

(*g*) But the principle was recognized previously in *The Industrie* (1871), L. R. 3 A. & E. 303; *Kidson v. McArthur*, 5 Ct. of Sess. Cas. 4th ser. 936.

(*h*) (1860), Lush. 410.

(*i*) *The Romance*, (1901) P. 15.

(*k*) *The Devonian*, (1901) P. 221.

(*l*) *The Esk and The Gitana* (1869), L. R. 2 A. & E. 350.

(*m*) See *The Indian Chief* (1889), 14 P. D. 24, for a decision to this effect under the Thames Rules (*infra*, p. 534).

chains with the anchors unshackled (*n*), nor a tug lying moored to a pontoon landing-stage in a river (*o*), nor a trawled moored outside another trawler at a quay (*p*). It is submitted, that in the light of these cases, the true meaning to be attached to the words "at anchor," is the meaning which they would appear naturally to bear, and that a vessel "at anchor" is a vessel which is in fact being held to an anchor (*q*), such anchor being effectively employed for its normal purpose, that is, of keeping the ship in a fixed relation to the ground (*r*), or else fast to moorings which are themselves attached to the ground by an anchor or the equivalent of an anchor (*s*).

A riding light should not be placed where it is obscured in any direction by masts, spars, sails, or rigging. The forestay is a usual, and probably the best, place for a riding light in an open roadstead or river. The foreshrouds is not so good a place (*t*). Care must be taken that sails and other gear likely to obscure the light are stowed (*u*), and a schooner has been held in fault because her mainsail was scandalised, instead of being stowed, and would obscure her riding light to a vessel astern (*x*).

Riding light must not be obscured.

The words of the second paragraph, "in the forward part of the vessel," were held to be satisfied by a light which, on a ship of 313 feet in length, was in the foreshrouds, 72 feet from the stem (*y*); but a light in the main shrouds, 100 or

(*n*) *The Faedrelandet*, (1895) P. 205.

(*o*) *The Titan, The Rambler* (1906), 10 Asp. M. C. 350. This decision is under the Tyne Rules, see p. 528. In this case an anchor light was in fact exhibited. It is submitted that where a vessel is made fast in a fairway, although she may not be "at anchor" within the Rules, good seamanship may demand the exhibition of an anchor light. See also *The City of Seattle*, 9 Canad. Exchq. Rep. 146.

(*p*) *The Turquoise*, (1908) P. p. 149. In America it has been held, that a ship fast to another alongside a wharf should show a light or make some sound in fog. See *The Kennebec*, 108 Fed. Rep. 300.

(*q*) See *The Esk* and *The Gitana*, L. R. 2 A. & E. 350. It seems a vessel may be "at anchor" while being towed up to her anchor. See *The Romance*, *supra*.

(*r*) See judgment of Sir F. H. Jeune, P., in *The Faedrelandet*, (1895) P. 205, at p. 209. For cases in which vessels have been found to be "under way," see under Art. 2 at p. 319.

(*s*) *The Dunelm* (1884), 9 P. D. 164, 171.

(*t*) *The Para*, Ad. Div. 4th March, 1886.

(*u*) See *The Hirondelle*, Ship. Gaz., Dec. 15th, 1905.

(*x*) *The Tolka*, Ad. Div. 14th Dec. 1886.

(*y*) *The Philadelphian*, (1900) P. 262.

Article 11. 120 feet from the stern of a ship, 455 feet long, was held not to be "at or near the stern" (z).

Riding light must be shown promptly. The proper riding light or lights should be hoisted into position and the side lights taken in with the utmost promptitude as soon as the vessel is held by her anchor; a delay of a minute or two may mislead an approaching vessel (a).

Sheering about. It is assumed that vessels at anchor are stationary (b), or nearly so; ships, therefore, when at anchor, must not be allowed to sheer about unnecessarily.

American cases. In America it has been held that a ship moored to a wharf out of the track of ships (c), and a man-of-war's launch in New York Harbour fast to a boom projecting sixty feet from the ship's side (d), are not required to exhibit a light. But a tug fast to a boom anchored in a fairway was held in fault for having no light (e).

Special riding lights. In many rivers and harbours local rules require special riding lights; those for the Thames, the Mersey, the Clyde, and the Humber, will be found in the Appendix below. So in foreign waters, as in the Suez Canal, the Elbe, and many of the Canadian rivers and harbours, special riding lights are required, and in some cases at specified heights.

Art. 7 exempts steam vessels under forty tons or other craft under twenty tons from carrying the "aground in or near a fairway" lights prescribed in the last paragraph of Art. 11.

"Aground." A vessel dragging through mud is not "aground" within this Article (f).

"Fairway." "Wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fairway" (g). A vessel lying at a wharf in a part of an artificial channel, which dried at low water, was held not to be "aground in or near a fairway" (h).

(z) *The Gannet*, (1900) App. Cas. 234.

(a) *The Wega*, (1895) P. 156.

(b) *The Esk* and *The Gitana*, *supra*.

(c) *Culbertson v. Shaw*, 18 How. 584; *The Granite State*, 3 Wall. 310; *The Express*, 48 Fed. Rep. 323; *The Mischief*, 39 Fed. Rep. 510; *The Gipsy*, 19 How. 56; dist. *The Alabama*, 26 Fed. Rep. 866.

(d) *The Dimitri Donskoi*, 60 Fed. Rep. 111; *aliter*, where the

ship projected beyond the end of the wharf: *Shield v. Mayor*, 18 Fed. Rep. 748.

(e) *The Willard Saulsbury*, cited, 1 Pars. on Ship. ed. 1869, 564.

(f) *The Belkanoch*, (1907) A. C. 269.

(g) *Per Bruce, J.*, in *The Blue Bell*, (1895) P. 242, at p. 246. See *The Clutha Boat* 147, (1909) P. 36.

(h) *The Turquoise*, (1908) P. 148.

The anchor lights to be exhibited by fishing vessels are dealt with in Art. 9.

Article 11.
Fishing boats.

ARTICLE 12.

Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal.

Article 12.

This Article is identical with Art. 12 of the Regulations of 1897. It first appeared in 1897, but it made no alteration in the law (*i*), as it was previously the practice of seamen to use the flare under the circumstances mentioned. Its insertion in the regulations was probably due to a suggestion which was made in the Courts that the use of the flare was contrary to the express prohibition (Art. 1) of other lights than those mentioned in the earlier Articles.

The "flare-up" light intended by the Article, presumably, is that in common use; and care must be taken that, if any of the modern pyrotechnic lights are used, they are such as cannot be mistaken for other lights prescribed by the regulations. The waving of a ship's lantern or globe light to attract attention might possibly be held to be illegal.

The permissive form of the Article is peculiar. The flare "may," the other lights "shall," be used. Notwithstanding the difference in wording, wilful omission to take some means to attract attention, if necessary, would, it is submitted, be negligence (*k*), though, probably, not an infringement of the regulations.

In America, under former regulations, which contained no provision for the "flare," it was held that a sailing ship was in fault for burning a flare, and leading the other vessel, which was burning blue lights for a pilot, to think that she was a pilot boat (*l*).

The authorised distress signals are given in Art. 31.

(*i*) See *The Simla* and *The City of Lucknow*, Ship. Gaz. 8th March, 1884; *The Merchant Prince*, 10 P. D. 139; *The John Fenwick* (1872), L. R. 3 A. & E. 500, 502; *The Lepanto*, 50 Fed. Rep. 234; *The Nessmore*, 50 Fed. Rep. 616.

(*k*) American cases as to this are conflicting: *The Algiers*, 28 Fed.

Rep. 240; *The Columbia*, 27 Fed. Rep. 238; *The Howard B. Peck*, 48 Fed. Rep. 334; *The Oregon*, 45 Fed. Rep. 62; *The Frank P. Lee*, 34 Fed. Rep. 480 (under the regulations).

(*l*) *The Wisconsin*, 23 Fed. Rep. 831. Cf. *The Algiers*, 38 Fed. Rep. 526.

Article 13.

Men-of-war's
signal lights.

ARTICLE 13.

Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by ship-owners, which have been authorized by their respective Governments and duly registered and published.

This Article is identical with Art. 13 of the Regulations of 1897, and corresponds with Art. 26 of 1884. The provision for recognition signals first appeared in 1897 (*m*).

By sect. 741 of the Merchant Shipping Act, 1894, the Act does not apply to "ships belonging to His Majesty." These words would seem to include any vessel belonging to the Crown, employed in the service of any Government department, as well as ships of war (*n*), but not ships chartered by the Crown. By the Merchant Shipping Act, 1906 (*o*), power was given to make regulations by Order in Council for the registration of Government ships as British ships, and applying the Merchant Shipping Acts to such ships with exceptions and modifications. Under this section an Order in Council of 22nd March, 1911 (*p*) has been made as to Government ships in the service of the Admiralty, but the application of sect. 419 of the Merchant Shipping Act, 1894, enjoining obedience to the regulations, is expressly excepted. An Order in Council of 29th September, 1917, has also been made as to Government ships in the service of the Shipping Controller. By this Order such ships are excluded from the category of ships belonging to His Majesty within the meaning of sections 557 to 564 of the Merchant Shipping Act, 1894 (salvage by H.M. ships). All the

(*m*) As to these signals, see the Merchant Shipping Act, 1894, s. 733, and Merchant Shipping (Convention) Act, 1914 (4 & 5 Geo. 5, c. 50), s. 6 (2).

(*n*) The contrary was held in *The Cybele* (1878), 2 P. D. 224, but this case must be taken as overruled by *Young v. S.S. Scotia*, (1903) App. Cas. 501, 505; cf. *Symons v. Baker*, (1905) 2 K. B.

725; *The Cargo ex Waosung* (1876), 1 P. D. 260; *The Dalhousie* (1875), 1 P. D. 271, note; such ships are not liable to arrest in an action *in rem*, neither are ships chartered or requisitioned by the Government, see *supra*, p. 230 *seq.*

(*o*) 6 Edw. 7, c. 48.

(*p*) Statutory Rules and Orders, 1911, p. 238.

Article 13.

Merchant Shipping Acts apply to them, except sects. 1 and 8 to 12 of the Act of 1894, with the proviso "that no provision of the Acts which, according to a reasonable construction, would not apply in the case of Government ships in the service of the Shipping Controller, shall be deemed to apply to such ships by reason only that its application is not hereby expressly excluded." All duties, liabilities, rights and powers imposed or conferred by the Merchant Shipping Acts on owners of ships are to be carried out, borne or exercised by the Shipping Controller on behalf of His Majesty (*pp*). Identical regulations are issued by the Lords of the Admiralty, and the question of negligence in case of a collision between two of his Majesty's ships, or between one of them and a merchant or other ship, is substantially the same as in case of a collision between merchant ships (*q*). It would seem that the Admiralty instructions apply to all ships in the service of the Admiralty, but they do not apply to ships in the service of other Government departments. Such ships, though under no statutory obligation to obey the regulations, will, it is submitted, be held bound to conform to them as a matter of seamanship.

In the case of a collision between a foreign man-of-war or public vessel and a merchant vessel, the foreign vessel, if she submits to the jurisdiction of the Courts of this country, is bound by the regulations (*r*).

ARTICLE 14.

Article 14.

A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter.

Steamship
under sail.

This Article is identical with Art. 14 of the Regulations of 1897, where it first appeared. It appears to assume that the steam vessel is under command (*s*). By the Prelimi-

(*pp*) Stat. R. & O. 1917, No. 1074.

(*q*) *H.M.S. Topaze* (1864), 10 L. T. 659; *H.M.S. Supply* (1865), 12 L. T. 799. But see *H.M.S. Sans Pareil*, (1900) P. 267, and cases under Art. 27 at p. 439. And see Arts. 1035 *seq.* of the

King's Regulations and Admiralty Instructions, 1906, as amended 1911.

(*r*) See *The Lord Byron*, Maude & Pollock on Shipping, 4th ed. 607, note (*k*); *The Newbattle* (1885), 10 P. D. 33.

(*s*) Cf. Art. 4.

Article 14.

nary Article a steam vessel under sail and not under steam is to be considered a sailing vessel.

Sound Signals for Fog, &c.

ARTICLE 15.

Article 15.Fog signals.

All signals prescribed by this Article for vessels under way shall be given :

1. *By "steam vessels" on the whistle or siren.*
2. *By "sailing vessels and vessels towed" on the fog-horn.*

The words "prolonged blast" used in this Article, shall mean a blast of from four to six seconds' duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell. In all cases where the rules require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small sea-going vessels. A sailing vessel of twenty tons gross tonnage or upwards shall be provided with a similar fog-horn and bell.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this Article shall be used as follows, viz. :

- (a) *A steam vessel having way upon her shall sound, at intervals of not more than two minutes, a prolonged blast.*
- (b) *A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between them.*
- (c) *A sailing vessel under way shall sound, at intervals of not more than one minute, when on the star-board tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.*
- (d) *A vessel, when at anchor, shall, at intervals of not*

more than one minute, ring the bell rapidly for about five seconds. Article 15.

- (e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules shall, instead of the signals prescribed in sub-divisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz., one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.*

* Dutch steam pilot vessels, when engaged on their station on pilotage duty in fog, mist, falling snow, or heavy rain storms, are required to make at intervals of two minutes at most one long blast with the syren, followed after one second with a long blast with the steam whistle, and again after one second by a long blast on the syren. When not engaged on their station on pilotage duty, they make the same signals as other steamships.

This Article is identical with Art. 15 of the Regulations of 1897 and corresponds with Art. 12 of 1884; it goes more into detail and is in some respects different from the latter. Besides verbal differences, the following points were new in 1897: (1) the definition of a prolonged blast; (2) the use of the fog-horn by a steamship in tow; (3) the exception of sailing vessels under twenty tons; (4) the addition of heavy rainstorms; (5) the signal for a steamship not moving through the water; (6) the direction to ring the bell rapidly; (7) the signals in paragraph (e). Regulations for signals for vessels under way in fog were first made in 1858, and for vessels at anchor in 1863; but beating drums, ringing bells, hammering on the anchor, and horns were in common use amongst seamen long before (t). A direction to indicate a sailing-ship's tack by sound signal

(t) The duty to use a horn was insisted upon in *The Carron* (1853), 1 Sp. 91; and the other signals are mentioned in a pleading of 1669.

Article 15.

(a horn on the starboard tack and a bell on the port) was also contained in the Regulations of 1858, but was omitted in the Regulations of 1863.

With regard to the wording of paragraph (b), a vessel "under way, but stopped and having no way on her," appears to be in the same condition as the vessel described in Art. 4 as "not making way through the water" (*u*). The vessel described in Art. 15 (e) as "unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules," is in much the same predicament as the vessel of Art. 4 which "from any accident is not under command," whether moving through the water or not. Notwithstanding the different wording of the two Articles, the intention, and, it is submitted, the reasonable construction of Art. 15 (e) is to supplement the balls and lights of Art. 4 with an equivalent sound signal to be used in thick weather.

A ship is under way within the meaning of this Article when she is not at anchor, or fast to the shore, or aground (*x*). Therefore, a ship stationary in the water, making no way, in a flat calm, must sound her fog-horn or steam whistle, provided her anchor is not down and holding. There is no doubt that a ship hove-to in a fog must sound her horn (*y*).

"The bell" which a ship at anchor is required to ring appears to be the ship's bell. There is no provision as to its size or sound capacity.

A barque heaving up her anchor failed to sound her fog-horn directly the anchor left the ground. She was run into by a steamship going at an excessive speed. The steamship was (in America) held to be alone in fault (*z*).

It would seem that a vessel moored to a wharf or pier is not required to sound her fog-horn or bell, for she is neither under way nor at anchor (*a*). But a vessel in tow, fast to her tug, brought up for fog or other reason, has, in America, been held in fault for not sounding a fog signal (*b*). A

(*u*) This means stopped completely: *The Kaiser Wilhelm II.* (1915), 85 L. J. P. 26.

(*x*) See *supra*, p. 319.

(*y*) So held in *Burrows v. Gower*, 119 Fed. Rep. 616.

(*z*) *The Obdam*, 60 Fed. Rep. 637.

(*a*) *The Titan* (1906), 10 Asp. M. C. 350. See *supra*, p. 342.

(*b*) *The Raleigh* and *The Niagara*, 44 Fed. Rep. 781. Cf. *The*

ferry boat manœuvring to enter her slip in New York harbour, within the line of the piers, was held not to be in fault for not sounding fog signals (c).

Article 15.

By local rules in force in different waters ships are required to sound their horns at various intervals. In America it has been held gross negligence in a steamship not to be fitted with a whistle (d).

When a tug is in attendance on a vessel, and though fast to her is not actually towing, she is not required to give the signals prescribed in paragraph (e), and when the vessel she is attending is giving the appropriate signals, it is good seamanship for the tug to give no signals, until she moves off on an independent course (e).

Towing signals.

The two-blast signal prescribed in paragraph (b) must not be given until all way is off the vessel; it is not sufficient that she has lost steerage way, she must be completely stopped, and another vessel hearing the signal is entitled to manœuvre on that assumption (f).

The two-blast signal.

What amount, or density, of fog must exist so as to make the use of the fog signals necessary, has not been decided by the Courts of this country. A definition arrived at by an American Court is probably sufficiently accurate. It was there said that, to give the Article a reasonable meaning, we must suppose that its intent is to give to approaching vessels a warning of which the fog would otherwise deprive them, and that it applies where there is fog enough to shut out the view of the sails, or hull, by day, or of the lights by night, until the vessels are so close that there would be risk of collision (g).

What is fog?

Where a vessel is in the neighbourhood of a fog bank, or has reason to think that there may be other vessels near her enveloped in fog, the fog signals should be sounded, though she herself is not in a fog (h). This is a reasonable pre-

City of Alexandria, 31 Fed. Rep. 427; *Ludwig v. Holberg*, 36 Fed. Rep. 914.

(c) *The Princeton*, 61 Fed. Rep. 116.

(d) *The Electra*, 1 Bened. 282.

(e) *The Sargasso*, (1912) P. 192.

(f) *The Matiana* (1908), 25 T.L.R. 51; *The Kaiser Wilhelm II.*

(1915), 85 L. J. P. 26.

(g) *The Monticello*, Dist. Ct. of Mass. U. S.; 1 Parsons on Shipp. 566 (ed. 1869).

(h) *The Milanese* (1881), 4 Asp. M. C. 318. Cf. *The Bernard Hall* (1902), 71 L. J. Ad. 72; *The Perkiomen*, 27 Fed. Rep. 573.

Article 15.

caution, but it does not appear to be expressly directed by the regulations, and the omission to do so would probably not be held to be an infringement of the regulations (*i*).

Use of mouth-horn instead of fog-horn.

A vessel using a mouth-horn, and not provided with a mechanical fog-horn, was held in fault for not complying with the regulations (*k*). Where, however, an efficient mechanical fog-horn is provided, but fails to work from reasons other than the negligence of the owners or their servants, the use of a mouth-horn will be held to be a "necessary departure" from the regulation within s. 419 (4) of the Merchant Shipping Act, 1894 (*l*).

Art. 15 does not in terms require the fog-horn to be sounded by mechanical means. Some mechanical horns are capable of being sounded by mouth, and there is reason to think that they are sometimes so used. If it were proved that the horn had been blown by mouth, and not by the bellows or piston, when the ships were at such a distance apart that the horn might have been heard earlier if it had been sounded by the mechanism, the ship on board of which it was blown by mouth would probably be held in fault for the collision.

It appears to be the custom of Nova Scotia fishermen to sound a fog-horn when at anchor. Such a practice is illegal, and may mislead other ships and cause them to get ashore (*m*).

Use of whistle when at anchor.

The question has been raised whether a steamship at anchor is justified in sounding her whistle under any circumstances. In certain states of the atmosphere an approaching vessel may be unable to see another at anchor, though visible herself from the latter's deck; and a violent blast of the steam whistle or siren might attract attention, when the ship's bell had not been heard. Under such exceptional circumstances, a blast of the whistle would probably be held to be justified by Art. 27.

Several craft in tow.

Whether all or only the last of several craft in tow should

(*i*) *The N. Strong*, (1892) P. 105; affirmed in regard to snow squalls, *The St. Paul*, (1909) P. 43.

(*k*) *The Love Bird* (1881), 6 P. D. 80. Cf. *The Energy*, 42 Fed. Rep. 301; *The Catalonia*, 43 Fed. Rep. 396; *The Bolivia*, 49

Fed. Rep. 169; *The Niagara*, 84 Fed. Rep. 902.

(*l*) *The Chilian* (1881), 4 Asp. M. C. 473; *The Coogee*, Victorian L. R. xxix. 874.

(*m*) See *The Barcelona*, 10 Quebec L. R. 305, and *The Battler*, 62 Fed. Rep. 612.

sound the fog signal allowed by Art. 15 has been much discussed in America (*n*). The point has not arisen in this country. Article 15.

It is the duty of a sailing ship when going about in a fog to make the signals for the tack she is on when she begins to go about, and not to change the signal until she gets the wind on the other side (*o*). Sailing ships.

Proof that a fog-horn was blown at proper intervals on board ship A. will not always raise a presumption of negligence on the part of those on board ship B., who swear that they were listening and heard no fog-horn. Nor will such evidence on the part of B. necessarily prove that no horn was blown by A. (*p*). Signals not heard.

The fog signals required to be made by fishing vessels are prescribed in Art. 9 (*i*).

Speed of Ships to be moderate in Fog, &c.

ARTICLE 16.

Every vessel shall, in a fog, mist, falling snow, or heavy rain-storms, go at a moderate speed, having careful regard to the existing circumstances and conditions. Article 16.
Speed in fog.

*A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over (*q*).*

This Article is identical with Art. 16 of the Regulations of 1897, and corresponds with Art. 13 of 1884. The words "heavy rain-storms," and the qualification "having careful regard to the existing circumstances and conditions," and the whole of the paragraph as to the conduct of a steam

(*n*) *The Harold*, 84 Fed. Rep. 698; *The Raleigh*, 44 Fed. Rep. 781; *The Whitney*, 77 Fed. Rep. 1001.

(*o*) *The Constancia*, 6 Asp. M. C. 478.

(*p*) See *supra*, p. 48; and see *The Zadok*, (1883), 9 P. D. 114; *The Rosetta* (1888), 6 Asp. M. C. 310;

The Merthyr (1898), 8 Asp. M. C. 475; *The Campania*, (1901) P. 289; *The Ching Kiang*, (1908) App. Cas. 251, 259; *The Nador*, (1909) P. 300; *The Curran*, (1910) P. 184.

(*q*) As to the application of this to a tug with a ship in tow, see *The Lord Bangor*, (1896) P. 28.

Article 16.

vessel "hearing" a fog signal of a vessel forward of her beam, were inserted in 1897. The first regulation enjoining moderate speed in fog was made in 1863, and limited to steamships; the obligation was extended to sailing vessels in 1880.

Art. 16 is to be construed in conjunction with Art. 23, and where the latter Article requires the engines to be stopped and reversed, Art. 16 does not justify a breach of Art. 23 (*s*). It is submitted, however, that where vessels are not in sight of one another by reason of fog, a vessel will only be held at fault under Art. 23 and other steering and sailing rules in cases where she has clear indications of the other vessel's position and probable course (*t*).

It would seem that Art. 16 does not apply to a steamship lying dead in the water, with her engines stopped. It neither requires nor forbids her to move her engines ahead or astern (*u*). Whether a heavy steamship in the track of vessels is justified in placing herself in so helpless a condition without reasonable cause is doubtful. Art. 15 (*b*) (*x*) requires her to sound a special signal under such circumstances. It is submitted that a sailing ship is justified in heaving-to for safety in a fog (*y*); but she must be in readiness to do what she can to clear another vessel suddenly coming into sight.

Excessive
speed is
negligence.

Apart from the regulations, the law requires a ship to be navigated in or near a fog at a moderate speed (*z*); the regulations make no alteration in the law in this respect. But the effect of an infringement of them must not be overlooked. A ship navigating at an improper rate of speed in thick weather would almost inevitably be held guilty of negligence contributing to the collision (*a*).

Vessels approaching a bank of fog (*b*) or snow (*c*), which

(*s*) *The Merthyr* (1898), 8 Asp. M. C. 475.

(*t*) See *Crawford and Another v. Granite City S.S. Co.* (1906), Sc. L. Rep. xliii. 732; see also *infra*, p. 359.

(*u*) *The Earl of Dumfries and The Boskenna Bay* (1886), 5 Asp. M. C. 329, n.

(*x*) *Supra*, p. 348.

(*y*) See *The Attila*, 5 Quebec L. R. 340.

(*z*) See *The Juliet Erskine* (1848), 6 Not. of Cas. 633; *The Lord Saumarez* (1848), *ibid.* 600; *The Milanese* (1881), 4 Asp. M. C. 433; *The N. Strong*, (1892) P. 105.

(*a*) As to the effect of improper speed under the old law, see *The Lord Saumarez*, 6 Not. of Cas. 600.

(*b*) *The N. Strong*, (1892) P. 105.

(*c*) *The St. Paul*, (1909) P. 43.

Article 16.

they are about to enter, should, as a matter of seamanship, go at a moderate speed. Failure to comply with this duty does not, however, amount to a breach of Art. 16 (*d*). The fact there is a fog bank bearing upon her bow, which she is not about to enter, does not impose upon a steamship a duty to go at a moderate speed (*e*).

It was said of Art. 13 of the Regulations of 1884, which dealt with the speed of ships in fog, that it was impossible to break that Article without also breaking Art. 18 of those regulations, which imposed upon both ships, when approaching with risk of collision, a duty to stop and reverse if necessary (*f*). It is submitted that this will not hold good as to the present Arts. 16 and 23, which correspond with the old Articles.

"Moderate" speed is a relative term. It cannot be defined so as to apply to all cases; what it should be in each case depends on the circumstances of the particular case; and the terms of Art. 16 recognize this fact. It may be stated as a general rule that speed such that another vessel cannot be seen in time to avoid her is unlawful. "I think the rule of law with regard to travelling at sea is identical with the law of travelling on the high road. No one on a dark night has a right to go at such a rate of speed as not to be able to escape an accident, if he happens to follow immediately in the wake of another, whether it be by sea or land" (*g*). Speed which is justifiable in an unfrequented part of the ocean is unlawful, and even criminal, in a crowded roadstead or fairway (*h*); and speed that would be moderate for a handy paddle-wheel tug may be highly improper for a low-powered, heavy, screw steamship (*i*). A vessel's power of stopping is also relevant in considering her speed in fog (*k*).

What is
"moderate"
speed.

In the case of *The Europa*, it was said by the Privy

(*d*) *The N. Strong*, *supra*; see 114; *The Attila*, 5 Quebec L. R. 340; *The Oravia* (1905), 10 Asp. 340; *The Oregon*, 27 Fed. Rep. 751. M. C. 436.

(*e*) *The Bernard Hall* (1902), 9 Asp. M. C. 300.

(*f*) *Per* Lord Esher, M. R. (1886), 11 P. D. 25.

(*g*) *Per* Lush, J., *The City of Brooklyn* (1876), 1 P. D. 276; *The Smyrna* (1864), 2 Moo. P. C. N. S. 435; *The Zadok* (1884), 9 P. D.

(*h*) *The Europa* (1850), 14 Jur. 627; *The Dordogne* (1885), 10 P. D. 6.

(*i*) See *The Elysia* (1881), 4 Asp. M. C. 540.

(*k*) *The Oceanic* (1903), 9 Asp. M. C. 378. *The Campania*, (1901) P. 289.

Article 16.

Council: "This may be safely laid down as a rule on all occasions, fog or clear, light or dark, that no steamer has a right to navigate at such a rate that it is impossible for her to prevent damage, taking all precaution at the moment she sees danger to be possible; and if she cannot do that without going less than five knots an hour, then she is bound to go at less than five knots an hour" (l).

The Campania, a twin-screw ocean liner of 12,950 tons, with a full speed of twenty-one knots, was going in the daytime, in a dense fog, twenty-six miles N.E. of the Tuskar, between nine and ten knots. The fog was so dense that another ship could not be seen more than 600 feet off. All the authorities were reviewed by Gorell Barnes, J., and he held that *The Campania* was not going at a moderate speed, and had infringed Art. 16. His decision was affirmed by the Court of Appeal (m).

A rate of speed which is "moderate" for vessels in the open sea, and out of anchorage ground, would not necessarily be "moderate" for a vessel navigating with a fair tide in a river or roadstead, where vessels are likely to be brought up. As regards danger to vessels at anchor, the speed of the other ship over the ground, and not through the water, is that which must be considered; and in such cases the strength and direction of the tide must be taken into account. As regards danger to vessels under way the tide is immaterial.

The object of Art. 16 is, not merely that vessels should go at a speed which will lessen the violence of a collision, but also that they should go at a speed which will give as much time as possible for avoiding a collision when another ship suddenly comes into view at a short distance (n).

Although it is not possible to state definitely, in knots, what is "moderate" speed for a steamship or for a sailing ship, a long series of decisions has reduced the question within narrow limits. In either case it must depend upon circumstances, which vary with every case. With regard to steam-

(l) The passage in the text is cited from *The Pennsylvania* (1875), 31 L. T. 103; 19 Wall. 125, 134. In the Court below the case is reported 14 Jur. 627; and in Pritch. Ad. Dig. the date of the hearing before the Privy Council is given as 6th Dec. 1851;

but the decision of the Privy Council does not appear to be reported in the books. See also *The Sargasso*, (1912) P. 192; *The Counsellor*, (1913) P. 70.

(m) (1901) P. 289.

(n) See per Sir J. Hannen, *The Zadok* (1884), 9 P. D. 114, 115.

Article 16.

ships, the conditions of the atmosphere, wind, and weather, the size, weight and handiness of the vessel, her available steam and engine power, her equipment of single or double propellers or paddle wheels (*o*), her steerage power, whether by hand or steam, and lastly, the locality and the probability of falling in with other ships, are amongst the most important matters to be considered. The following cases indicate the tendency of modern decisions; but each case has to be considered with reference to its own circumstances, and no one case can be relied upon as binding in any other. Seven knots an hour was held by the Privy Council to be too high a rate of speed for an ocean steamship in a fog in the track of ships 200 miles to the eastward of Sandy Hook (*p*); and even four knots has been held too fast for a steamship in the sea in a fog so dense that another ship could not be seen seventy yards off (*q*). In the Clyde six or seven knots over the ground was held too much for a steamer in a thick fog (*r*). Off Cromer, with a whistle sounding ahead, three-and-a-half knots (*s*), in the sea ten miles off Ushant four knots (*t*), in the Horse Channel, at the entrance to the Mersey, on a dark night ten knots (*u*), for a liner off the Tuskar six-and-a-third knots (*x*), in Gibraltar Straits on a course crossing the traffic five knots (*y*), four-and-a-half knots in the Bay of Biscay (*z*), and three knots near the entrance to the Tyne (*a*), have been held too fast. In America four knots in a frequented part of the Atlantic, off the American coast, with a bad look-out, was held too much (*b*); but for a small steamship and for a schooner off Cape Cod, four or five was held to be moderate (*c*). The wholly unjustifiable rate of fifteen knots

(*o*) The importance of the power to stop the ship's way was insisted on in *The State of Alabama*, 17 Fed. Rep. 847; *The Michigan*, 63 Fed. Rep. 280.

(*p*) *The Pennsylvania* (1871), 23 L. T. 55. See also *The Ching Kiang*, (1908) A. C. 251, and *The City of Brooklyn* (1876), 1 P. D. 276.

(*q*) *The Magna Charta* (1872), 1 Asp. M. C. 153.

(*r*) *Little v. Burns, The Owl and The Ariadne* (1881), 9 Ct. of Sess. Cas. 4th ser. 118.

(*s*) *The Ebor* (1886), 11 P. D. 25.

(*t*) *The Dordogne* (1885), 10 P. D. 6.

(*u*) *The Despatch* (1857), Swab. 138.

(*x*) *The Oceanic* (1905), 9 Asp. 378.

(*y*) *The Resolution* (1900), 6 Asp. M. C. 363.

(*z*) *The Counsellor*, (1913) P. 70.

(*a*) *The Bromsgrove*, (1912) P. 182.

(*b*) *The Pottsville*, 12 Fed. Rep. 631.

(*c*) *The Lorenzo D. Baker*, 24 Fed. Rep. 814; *The Mount Hope*, 84 Fed. Rep. 910.

Article 16.

has been repeatedly condemned (*d*); six (*e*), seven (*f*), eight (*g*), nine (*h*), ten (*i*), and twelve (*k*) have been held to be too fast. On the other hand, where the steam power was such that the ship could be brought to a standstill in two of her own lengths, five or six knots (*l*), and in Gibraltar Straits two-and-a-half knots (*m*), was held to be moderate; and where the ships were visible to each other from a half to a third of a mile apart, seven knots (in a snowstorm) was held not to be too fast (*n*). In another American case of two loaded steamships of about 2,000 tons burden, seven-and-a-half knots was held too fast for the one, and four-and-a-half not too much for the other (*o*), and in a river four-and-three-quarters with the tide was held to be moderate, whilst five-and-a-third against the tide was excessive (*p*). The stringency of the law as to speed is illustrated by a case where a steamship, hearing, as she thought, cries of distress from a ship astern, turned round and made for the cries at a speed of seven knots. Notwithstanding the praiseworthiness of her motive in hurrying to assist the other vessel, she was held in fault for a collision with her that followed (*q*).

It has been held in America that it is not enough to slacken until the speed is such as would enable the steamship to avoid another vessel which is sounding her fog-horn (*r*). And from the English decisions it appears that the rate must be regulated by the thickness of the fog, and the probability of falling in with other ships, rather than by the supposed distance at which a horn or bell would be audible.

(*d*) *The Britannio*, 39 Fed. Rep. 395; *The Trave*, 68 Fed. Rep. 390; *The Saale*, 63 Fed. Rep. 478; *The Rhode Island*, 17 Fed. Rep. 554; *The Umbria*, 166 U. S. Rep. 404.
(*e*) For a schooner, *The Harold*, 84 Fed. Rep. 698; a tug and tow in strong tide, *The H. F. Dimock*, 77 Fed. Rep. 226; *In re Clyde S.S. Co.*, 134 Fed. 95.

(*f*) *The Winooski*, 162 Fed. 64.
(*g*) *The Charlotte Webb*, 43 Fed. Rep. 151; *The Vesper*, 9 Fed. Rep. 569; *The Patria*, 92 Fed. Rep. 411; *The Cheruskia*, 92 Fed. Rep. 683.

(*h*) *The Alberta*, 23 Fed. Rep. 807.

(*i*) *The Peshtigo*, 25 Fed. Rep. 488; *The City of New York*, 35

Fed. Rep. 604; *The Catalonia*, 43 Fed. Rep. 396; *The Bourgogne*, 139 Fed. 434.

(*k*) *The Pennland*, 23 Fed. Rep. 551.

(*l*) *The Michigan*, 63 Fed. Rep. 280.

(*m*) *The Resolution* (1889), 6 Asp. M. C. 363.

(*n*) *The Allianca*, 39 Fed. Rep. 476.

(*o*) *The Lepanto*, 21 Fed. Rep. 651.

(*p*) *The Luray*, 24 Fed. Rep. 751.

(*q*) *The Nacoochee*, 28 Fed. Rep. 462.

(*r*) *The Hansa*, 5 Bened. 501; but see *The Michigan*, 63 Fed. Rep. 280, 478.

It is no excuse for excessive speed that the ship is carrying mails, and under contract to deliver them by a certain date (s); or that it was desirable in order to get out of the fog (t). A steamship entering a fog bank at a speed of eight knots was held in fault (u).

Article 16.

Excuses for too great speed.

It is a common excuse that the ship was going as slowly as she could; that she would not steer, or that her engines would not turn over, if she had tried to go slower. The answer to this was given by Sir James Hannen: he said that if a steamship is so constructed that she cannot go at a moderate speed, she navigates at her own risk (x). And Butt, J., said, in another case (y), that it was the duty of a steamer in such circumstances to occasionally stop her engines. Inability to steer under moderate speed is not a special circumstance within the meaning of Art. 27 which will justify a departure from Art. 16 (z).

The duty of a steamship in a fog in relation to another ship, whose whistle she hears, formerly governed by Art. 18 of the Regulations of 1884, has now to be considered under Art. 16. The duty of a steamship to "stop her engines" under the Article has frequently been insisted upon. One of the reasons given for a firm insistence on this obligation is that the stopping of the engines gives a better opportunity of hearing the other vessel's fog-horn or whistle (a), and so of ascertaining her whereabouts, always a matter of extreme difficulty by reason of the capricious way in which sound is conveyed in fog (b). Most of the cases, which have dealt with this duty, have turned on the point, whether

Duty of steamship in fog.

(s) *The Vivid* (1856), Swab. 88; 10 Moo. P. C. 472; *The Northern Indiana*, 3 Blatchf. 92.

(t) *The Hansa*, 5 Bened. 501, 521; *The Chancellor*, 4 Bened. 153, 164.

(u) *The Harton* (1884), 9 P. D. 44.

(x) *The Irrawaddy*, Ad. Div. 15th June, 1887; followed in *The Campania*, (1901) P. 289.

(y) *The Resolution* (1889), 6 Asp. M. C. 363; see also *per Hannen, P.*, in *The Rosetta*, *ibid.* 310; Gorell Barnes, J., *The Ger-*

manic, Ad. Ct. Feb. 1896.

(z) *The H. F. Dimock*, 77 Fed. Rep. 226. Cf. *The Cincinnati*, 95 Fed. Rep. 302.

(a) *The Rondane* (1900), 9 Asp. M. C. 106; *The Koning Willem I.*, (1903) P. 114. Whether this is so in view of the noise made by blowing off steam may be questioned.

(b) See *The Ching Kiang*, (1908) A. C. 251, at p. 259, and *The Koning Willem I.*, *supra*. See also *The Rosetta* (1890), 6 Asp. M. C. 310.

Article 16.

the vessel, which has omitted to stop, can establish either that the position of the other vessel was ascertained, or that the circumstances did not admit of stopping. Such contentions have usually failed (c). Thus a steamship will not be held justified in not stopping for a fog signal forward of her beam because another vessel is sounding a fog signal some distance away four points on her port quarter (d), nor because she has a cargo of dynamite stowed aft which might render her stopping dangerous to other vessels (e). Nor will the fact that a tug has a vessel in tow of itself excuse non-compliance with a duty to stop (f).

The position of a vessel will not be regarded as ascertained by a steamship under a duty to stop and navigate with caution, apart from such ascertainment, merely because the vessel seems to be far away. "If this Court were to hold that upon hearing a whistle which sounded to be distant a vessel was justified in not stopping, although its position was not ascertained, except that it sounded a long way off, every case in this Court would be that the whistle sounded such a long way off that the ship was justified in not stopping" (g). The position of a vessel will only be regarded as ascertained when the fog signals place the matter beyond reasonable doubt. A question put to the Elder Brethren in the case of *The Aras* (h) illustrates what amounts to ascertainment. "Were the indications such as to show her master, distinctly and unequivocally, that if both vessels continued to do what they appeared to be doing they would pass clear without risk of collision?" (i). A steamship has been held liable for not stopping when she heard a fog signal proceeding from a fog bank on her port bow, which she herself was not about to enter (k). A steamship is not justified in maintaining her

(c) For duty to stop on hearing whistle or hailing apart from the present Art., see *The Frankland* and *The Kestrel* (1872), L. R. 4 P. C. 529; *The Kirby Hall* (1883), 8 P. D. 71; *The Dordogne* (1885), 10 P. D. 6; and see *The Teutonia*, 23 Wall. 77, and *The Admiral Schley*, 142 Fed. 64.

(d) *The Britannia*, (1905) P. 98.

(e) *The Star of New Zealand*,

Ship. Gaz. Nov. 7th, 1899.

(f) *The Challenge* and *The Duc d'Aumale*, (1905) P. 198; *The Lord Bangor*, (1896) P. 28, distinguished.

(g) *The Britannia*, (1905) P. 98, at p. 104, per Gorell Barnes, J.

(h) *The Aras*, (1907) P. 28.

(i) *Ibid.* at p. 34.

(k) *The Bernard Hall* (1902), 9 Asp. M. C. 300.

speed in order the better to ascertain the position of a vessel whose fog signal has been heard once apparently far off (*l*).

On the other hand a vessel proceeding down the Manchester Ship Canal was held excused for not stopping on hearing a fog signal forward of her beam, on the ground that the position of vessels ahead of her in the canal, which were presumably on their proper side of the canal, was ascertained. It was also apparently considered in this case that the "circumstances of the case" did not reasonably "admit" of her stopping (*m*).

The case of *The Oravia* (*n*) may be regarded as throwing some light on the steamship's duty to "stop." Here *The Nereus* saw *The Oravia* at a distance of about three miles in a position to pass her all clear port side to port side. As the vessels proceeded a fog bank intervened. On entering the bank *The Nereus*, which had been making about eight knots, put her engines to slow. On hearing a port helm signal from *The Oravia* she ported without stopping. She was held justified in her manœuvre, as the position of *The Oravia* was known to her. It is submitted that had *The Nereus*, in the circumstances, heard a fog signal from *The Oravia* instead of the port helm signal, she would still have been justified in not stopping, the position of the other vessel having been ascertained within the Article.

What will amount to "navigating with caution" within the Article must necessarily depend on the circumstances of each case. In some circumstances the proper course of a vessel, which has stopped on hearing the first fog signal forward of her beam, will be to continue at slow speed, stopping her engines from time to time (*o*), and in others to reverse and take all way off the ship (*p*). In certain circumstances the alteration of helm in a fog by a steamship hearing the whistle of another vessel forward of her beam may not

"Navigating
with
caution."

(*l*) *The Koning Willem I.*, (1903) P. 114.

(*m*) *The Hare*, (1904) P. 331; so held on the assumption that the regulations applied.

(*n*) *The Oravia* (1905), 10 Asp. M. O. 525. See also *The Geelong*, Ship. Gaz. March 5th, 1908, where an overtaken ship was held to have ascertained the position of a vessel

which passed from her quarter on to her bow.

(*o*) *The Aras*, (1907) P. 98; *The Byron*, Ship. Gaz. 9th Feb. 1905.

(*p*) *The John McIntyre* (1884), 9 P. D. 135; *The Dordogne* (1884), 10 P. D. 6; *The Ebor* (1886), 11 P. D. 25; *The Ceto* (1889), 14 App. Cas. 670.

Article 16.

be an improper manœuvre (*q*). Such manœuvre cannot, however, relieve a vessel of the duty to "stop" under this Article.

In a fog so dense that it is not possible for a ship to see others in time to avoid them, she is not justified in being under way at all, except from necessity. Neither Art. 16 nor Art. 23 justifies her in being under way under such circumstances (*r*).

An inward-bound ocean steamship of 2,435 tons register was overtaken near the North-West Lightship in Liverpool Bay by a very dense fog. She lay with her engines stopped driving stern foremost in an E.S.E. direction towards Liverpool with the flood tide. It was held that she was not in fault for not having brought up (*s*). In an American case (*t*) it was held that a steamship in a fog was in fault for bringing up in the track of ships, when she might have got into anchorage ground.

The duty of a steamship under way in a fog has been thus stated by the Supreme Court of the United States:—"The best precautions are bright signal lights; very low speed—just sufficient to subject the vessel to the command of her helm; competent look-outs properly stationed and vigilant in the performance of their duties; constant ringing of the bell or blowing of the fog-horn, as the case may be; and sufficient force at the wheel to effect, if necessary, a prompt change in the course of the vessel" (*u*).

Pressure of
steam when
going slow.

It has been said in an American case that the meaning of the rule that a steamship shall in a fog go at a moderate speed is, not that she shall only have such a pressure of steam as will enable her to go slow, but that she shall have her full steam power, and still go slow, so that she may be able to

(*q*) See *The Castleventry*, Ship. Gaz. 16th April, 1904, in which case a vessel was held justified in porting to avoid a vessel from which a signal of two prolonged blasts had been heard, apparently forward of her beam. See also p. 354, *supra*, and *The Windomora*, 14 P. D. 172; (1891) App. Cas. 1; *The Umbria*, 166 U. S. Rep. 404. But see *The Resolution* (1889), 6 Asp. M. C. 363.

(*r*) *The Lancashire* (1874), L. R. 4 A. & E. 198; *The Otter*, *ibid.*

203; *The Girolamo* (1833), 3 Hag. Ad. 169; *The North American and The Wild Rose* (1866), 2 Mar. L. C. O. S. 319; *Smith v. St. Lawrence Tow Boat Co.* (1874), L. R. 5 P. C. 308; *The Victoria* (1849), 3 W. Rob. 49; *The Perth* (1834), 3 Hagg. 414.

(*s*) *The Kirby Hall* (1883), 8 P. D. 71.

(*t*) *The Ailsa*, 76 Fed. Rep. 868.

(*u*) *The Colorado*, 1 Otto, 692. Cf. *The Franconia*, 4 Bened. 181.

bring herself to a standstill as soon as possible (*x*). In another case, it was said that in a dense fog a ship is bound to go as slowly as possible, consistently with steerage way (*y*). Though not bound to lie-to (*z*), a sailing ship must put herself under moderate sail in a fog and use extra caution (*a*). A schooner carrying on at night, and racing with another vessel, was held in fault (*b*).

Article 16.

The words of Art. 16 as to stopping engines cannot apply to sailing ships (*c*); but undue speed is forbidden by that Article both for sailing ships and for steamships. Where a sailing ship had her studding sails set in a thick fog and came into collision with another ship, Dr. Lushington, before there was any regulation on the subject in force, said: "It is unquestionably the duty of a master in intense fog to exercise the utmost vigilance, and to put his vessel under command, so as to secure the best chance of avoiding all accidents, even though such precautions may occasion some delay in the prosecution of the voyage" (*d*). But in this, and in another case (*e*), the sailing ship, though under a press of sail in a fog, was not therefore held in fault for the collision. So a brig in the Atlantic carrying all plain sail and going five knots (*f*), a large loaded ship in the Channel track off Folkestone going five knots (*g*), and a barque off the Land's End going four knots in a fog (*h*), were held free from blame (*f*).

Speed of sailing ships in a fog.

In *The Zadok* (*i*), a barque with nearly all the canvas set which she could carry, going five knots or upwards in a fog in a frequented part of the English Channel, was held in fault for not going at a moderate speed. In the same case Sir J. Hannen said that it is the duty of a sailing ship in a

(*x*) *The Hansa*, 5 Bened. 501.

(*y*) *The Westphalia*, 4 Bened. 404; 24 L. T. 75.

(*z*) *The Morning Light*, 2 Wall. 550; *The Colorado*, 1 Otto, 692.

(*a*) *The Colorado*, 1 Otto, 692.

(*b*) *The Thomas Martin*, 3 Blatchf. 517.

(*c*) *The Dordogne* (1885), 10 P. D. 6, 12.

(*d*) *The Itinerant* (1844), 2 W. Rob. 236. In *The Vesper*, 9 Fed. Rep. 569, a sailing ship going eight knots was held in fault for excessive speed.

(*e*) *The Ebenezer* (1844), 2 W. Rob. 206.

(*f*) *The Elysia* (1882), 4 Asp. M. C. 540.

(*g*) *The Milanese* (1880), 4 Asp. M. C. 318; reversed on another point.

(*h*) *The N. Strong*, (1892) P. 105.

(*i*) 9 P. D. 114. Cf. *The Wyanoke*, 40 Fed. Rep. 702 (six knots); *The Chattahoochee*, 173 U. S. Rep. 540 (six or seven knots outside Nantucket shoals near the track of Atlantic liners).

Article 16.

fog, where she cannot see her way, to moderate her speed to the point at which she has just way sufficient to have the power of controlling her movements. A similar rule has been laid down (*obiter*) in the Court of Appeal (*k*).

A sailing ship going six-and-a-half knots over a fishing ground on a dark night, when vessels were visible only 100 or 200 yards off, was held in fault (*l*); also a sailing ship going five or six knots up Swin on a dark and cloudy night (*m*).

A schooner at night in a dense fog in the Bristol Channel was held in fault for not going at a moderate speed. It does not appear what her speed was; but she had all plain sail set, and it was held that she was going faster than was necessary "to keep her under command" (*n*). It is submitted that the decisions as to what is "moderate" for small sailing ships bear heavily upon such vessels, and that they should not be carried any further. A small coaster with all plain sail set, sailing by the wind, is seldom going more than four or five knots, and it may be doubted whether she would be less likely to do damage if she shortened sail (*o*).

It has been said that where a sailing ship in a fog is aware of the proximity of another vessel, though unable to see her, it is the duty of the person in charge to order his people to stand by the sheets and braces, in order to manœuvre the sails, and assist the helm, at the first moment the other ship is seen (*p*).

Art. 16 overrides the steering and sailing rules.

Article 16 overrides the steering and sailing rules (Arts. 17 *seq.*); and a steamship that under those rules has the right of way cannot, in case of collision, justify a departure from Art. 16 upon the ground that she kept her course and speed (*q*). This probably is the meaning of the saying in an American case that in a fog so dense that the course of the other ship cannot be made out the steering and sailing rules do not apply (*r*).

(*k*) *The Dordogne* (1885), 10 P. D. 6, 12.

(*l*) *The Pepperell* (1857), Swab. 12. Cf. *The Frank*, 2 Quebec L. R. 295, a barque on the banks of Newfoundland.

(*m*) *The Victoria* (1849), 3 W. Rob. 49.

(*n*) *The Beta* (1884), 9 P. D. 134.

(*o*) Cf. *The N. Strong*, (1892) P. 105; *The Martello*, 39 Fed. Rep. 505 (four knots not excessive).

(*p*) See *The Zadok* (1884), 9 P. D. 114, 117.

(*q*) *The Cathay* (1899), 9 Asp. M. C. 35.

(*r*) *The Grenadier* and *The August Korff*, 74 Fed. Rep. 974.

A vessel going at too great a rate of speed on a dark night, or in thick weather, cannot be heard to say that a collision was the result of inevitable accident (*s*). Article 16.

In some rivers the speed of ships is limited by local rules, which apply in all weathers, thick or clear.

If a steamship has the wind aft, so that her own smoke is blown ahead, obscuring the lights or the view from her deck, it is her duty to go at a moderate speed, and so that she may see and be seen by other vessels in time to avoid collision (*t*). Inevitable accident : speed excessive.
Local rules as to speed.
Steamship's smoke obscuring lights and view.

The duty of a steamship approaching another vessel with risk of collision, to slacken her speed, or to stop and reverse, is considered below (Art. 23).

The case of a steamship lying dead in the water in a thick fog, and hearing the whistle or horn of an approaching vessel, is not provided for by the regulations. Art. 16 does not, it is submitted, require her to "go at a moderate speed"; nor, on the other hand, does Art. 23 require her not to move her engines. The prudent course appears to be for her to set her engines ahead and so to gather slight headway (*u*). Steamship lying dead.

It is submitted that a sailing ship would not be held in fault for heaving-to for safety in a fog (*x*). Sailing ship hove-to.

In very thick weather, or great darkness, a vessel is not justified in running through a crowded roadstead, but should, if possible, bring up (*y*). Nor is she justified in the Thames in leaving a wharf in a dense fog for the purpose of going up the river on a flood tide; and it has been said that the proper way to go up, under such circumstances, is stern first, dredging with the anchor on the ground, so as to be able to bring up at a moment's notice (*z*). In a dense fog in New York harbour a steamship ran into another vessel lying at a wharf, by reason of her compass being out of order. She was held to be in fault (*a*). Being under way in fog unnecessarily.

The Lancashire was a Liverpool and Birkenhead ferry Ferry boats running in a fog.

(*s*) *The Juliet Erskine* (1848), 6 L. R. 340.
Not. of Cas. 633.

(*t*) *The Rona* and *The Ava* (1874), 2 Asp. M. C. 182; *The Vivid*, 7 Not. of Cas. 127.

(*u*) *The Earl of Dumfries* and *The Boskenna Bay* (1885), 5 Asp. M. C. 329, n.

(*x*) See *The Attila*, 5 Quebec 189.

(*y*) *The Victoria* (1849), 3 W. Rob. 49; *The George* (1845), 4 Not. of Cas. 161; *The Lochlibo* (1850), 7 Moo. P. C. 427.

(*z*) *The Aguadillana* (1889), 6 Asp. M. C. 390.

(*a*) *The Mohawk*, 42 Fed. Rep. 189.

Article 16.

steamer. She left her landing-stage to cross the Mersey in a very dense fog, though warned that vessels were anchored in her track, and that one was not replying to signals, and ran into *The Levant*. It was contended for *The Lancashire* that it was the custom for the ferry boats to run in all weathers, and that it was necessary for the convenience of the public that they should do so. *The Lancashire* was held in fault for the collision, on the ground that she was not justified in going across the river in such weather (b).

American cases as to ferry boats running in a fog.

The law in America as to ferry steamers being under way in a fog seems to be more favourable to the ferry boats than that of this country, as laid down in *The Lancashire*. In *The Exchange* (c), it was held that while owners of ferry boats have not any exclusive privileges of navigation over owners of other vessels, nevertheless, since public convenience requires the ferry boats to be running as constantly as possible, the rules which are applicable to the running of such a boat are, that while more than ordinary care, vigilance, and caution are required on the part of the ferry boat, she is entitled to more than ordinary diligence on the part of other vessels to avoid her. And the cases show that where, as in the strong tides of New York harbour, it is necessary for them to run at a speed of four or five knots, in order to be under command, they will not be held in fault for excessive speed (d).

In another case (e), it was held that a ferry boat is not bound to stop running in a dense fog. There are other American cases to the effect that vessels are required to know the usual track of ferry boats, and to take precautions accordingly, and particularly not to anchor in their track (f).

STEERING AND SAILING RULES.

Preliminary—Risk of Collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an ap-

(b) *The Lancashire* (1873), L. R. 4 A. & E. 198.

(c) 10 Blatchf. 168. See also *Hoffman v. Union Ferry of Brooklyn*, 68 N. York Rep. 385; *Briggs v. The Whitehall*, 68 Fed. Rep.

1022; *The Orange*, 46 Fed. Rep. 408.

(d) *The Ophelia*, 44 Fed. Rep. 941.

(e) *The Lydia*, 11 Blatchf. 415.

(f) *The Hudson*, 5 Bened. 206; *The Relief*, Olcott, 104.

proaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. Article 16

ARTICLE 17.

When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz.:— Article 17.
Two sailing ships.

- (a) *A vessel which is running free shall keep out of the way of a vessel which is close-hauled.*
- (b) *A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.*
- (c) *When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.*
- (d) *When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.*
- (e) *A vessel which has the wind aft shall keep out of the way of the other vessel.*

This Article is identical with Art. 17 of the Regulations of 1897, and corresponds with Art. 14 of 1884. The preliminary paragraph, as to risk of collision, was inserted in 1897. There have been recognised rules for the courses of sailing vessels approaching each other from very early days, and in 1840 paragraphs (a) and (b) of Art. 17 were in effect laid down as general regulations. Between 1840 and 1884, when the rules took substantially their present shape, several changes were made.

The preliminary paragraph to the steering and sailing rules imposes a duty on the person in charge of a vessel to take compass bearings of the lights of other vessels as they come into view. A vessel will be held to blame for an omission to take bearings, when a collision might have been avoided, if the information, which observation of the bearings would have given, had been obtained (g). When the

The preliminary paragraph.

Article 17.

bearing of a light on a vessel ahead narrows, it indicates that she will cross ahead; when it broadens, that she will pass clear on the beam, if the course of neither vessel is altered. When observation of the bearings indicates risk of collision, a vessel will be held to blame if the appropriate steps to avert or minimise the effect of collision are not promptly taken (*h*).

When the steering and sailing rules apply.

The steering and sailing rules can be applied with effect only when the position and course of the one ship are approximately known to the other. They are therefore frequently inapplicable in a fog. In that case each ship must comply with Art. 16. The steering and sailing rules will not be used by the Courts merely to decide, upon facts made known only by the event, which ship would have been in fault if there had been no fog (*i*).

“Running free”: meaning of the term.

The classification of sailing ships contained in this Article occasions some difficulty. It is probably intended to be an exhaustive and not a cross classification. It is doubtful whether it is either the one or the other; the wording is at least ambiguous. “Running free” appears to mean not close-hauled; but the phrase is not happily chosen to describe a ship that has the wind a point or two free but forward of the beam (*k*). The words “with the wind abaft the beam” occur in Art. 15 (*c*). Again, the question arises, whether a vessel which “has the wind aft” can at the same time be “running free”; and, if so, whether (*d*) or (*e*) prevails; whether, if she is to leeward of the other ship, she is required to keep out of the way under Art. 17 (*e*), or to keep her course under the combined operation of Art. 17 (*d*) and Art. 21. A further question arises as to how the dividing line between “running free” and having “the wind aft” is to be drawn; whether, for example, a ship with the wind on the quarter, say, three points from dead aft, “has the wind aft.” These difficulties will be found discussed at length in *The Privateer* (*l*), an Irish case. In that case the Court seems to have

(*h*) *The City of Berlin*, (1908) P. 110.

(*i*) See *The Cathay* (1899), 9 Asp. M. C. 35.

(*k*) A ship in this condition appears to be treated as close-hauled in the trades, though such

a view was not countenanced by the Court: *The Earl Wemyss* (1889), 9 Asp. M. C. 407.

(*l*) (1881), 7 L. R. 1r. 105; *infra*, p. 376. See also *The Byfoged Christensen* (1879), 4 App. Cas. 669.

been of opinion that a ship may at the same time be "running free" and have "the wind aft"; and it appears to have been held in the same case that a ship with the wind about two points free was close-hauled; but the latter view received no support from Lord Esher, Master of the Rolls, who expressed the opinion that a ship might be close-hauled when a little off the wind, but doubted whether she would be so if she had the wind a point and a-half free (*m*).

Article 17.

In *The Singapore* (*n*), decided under the Regulations of 1863, Lord Westbury appears to have used the phrase "running free" as equivalent to "free"—the term used in Art. 12 of the Regulations of 1863. But in that case the ship heading E. with the wind at N.W. was clearly both free and running.

In *The Spring* (*o*) a smack with the wind from two to four points from dead aft was held to have the wind aft within the meaning of Art. 12 of the Regulations of 1863.

Under former regulations it was held that a vessel required to keep out of the way of another might do so in any way she thought proper. She might go ahead or astern of the other, and she might put her helm to port or starboard, as she thought best (*p*). Art. 22 of the existing regulations makes an important alteration of the law in this respect. If the circumstances permit, she must avoid crossing ahead of the other vessel—in other words, she must go under the other vessel's stern. The effect of this alteration in the law is, that if it is possible for her to go under the other ship's stern, and she attempts to cross her bows, she will be inevitably held in fault under the statute for a collision that may ensue.

A ship required to keep out of the way must go under the other's stern.

It has been held in *America* (*q*) that where two courses are open to a vessel required to keep out of the way, and she selects the more hazardous, she is responsible for a collision that would not have occurred if she had taken the safer course.

Alteration in the law.

Art. 17 is supplemented by, and must be read with, Arts. Art. 17 is supplemented

(*m*) *The Earl Wemyss* (1890), 61 L. T. 289, 290; 6 Asp. M. C. 407. M. C. 264; *The Carroll*, 8 Wall. 302; *The Great Eastern* (1865), 3 Moo. P. C. N. S. 31.

(*n*) (1867), L. R. 1 P. C. 378.

(*q*) *The Empire State*, 1 Bened. 57.

(*o*) (1866), L. R. 1 A. & E. 99.

(*p*) *The Nor.* (1874), 2 Asp.

Article 17.

and modified
by Art. 21
and Art. 24.

21 and 24; the former requires every vessel not directed to keep out of the way to keep her course and speed (*r*); the latter requires every vessel overtaking another to keep out of the way (*s*); and regard must always be had to the provision of Art. 27 (*t*). The difficulty which arose under the Rules of 1863, of drawing the line between "crossing" and "overtaking" ships (*t*), is intended to be removed by the opening words of Art. 24. Under the existing regulations a sailing ship which is travelling faster than another ahead, and coming up with her from a position more than two points abaft the other's beam, must keep out of the way (*u*), but if two vessels are cross-tacking, Art. 24 does not apply, though one is overtaking the other, and the vessel on the port tack must give way in pursuance of Art. 17 (*b*) (*x*).

Duty of ship
required to
keep her
course to
stand on :

The duty of the ship close-hauled on the starboard tack, under Art. 17, is strictly to obey the rule requiring her to keep her course. She can excuse a departure from that rule only by showing that it was necessary to avoid immediate danger (*y*). "Keeping her course" under Art. 22 means keeping her course by the wind. If in so-doing she comes to or breaks off a little, she does not thereby infringe Art. 22 (*z*); though it is an infringement if, alleging that she is close-hauled, she comes up as much as two and a-half points (*a*). But a vessel would not be justified by Art. 17 in standing on obstinately where it is clear that a collision may be avoided if she alters her helm, and in no other way (*b*).

though it is
an infringe-
ment to come
up as much as
two points
and a-half.

The rule requiring a ship close-hauled on the starboard tack to stand on appears formerly not to have been so strict as it is under the existing law. Formerly, where two vessels on opposite tacks were approaching with risk of collision, it was held to be the proper course for both to put their helms to port (*c*). Such is not now the law. Before altering her helm, a ship must ascertain what course the other ship is upon, and how she has the wind. Her duty is to wait until

- (*r*) See *infra*, p. 390.
- (*s*) See *infra*, p. 416.
- (*t*) See *infra*, p. 432.
- (*u*) See *The Seaton*, *infra*, p. 420.
- (*x*) *The Annie*, (1909) P. 176.
- (*y*) See Art. 27.
- (*z*) *The Marmion* (1873), 1 Asp. M. C. 412; *The Aim* and *The Amelia* (1874), 2 Asp. M. C. 96;

The Emily B. Maxwell, 96 Fed. Rep. 999.

(*a*) *The Earl Wemyss* (1891), 6 Asp. M. C. 407.

(*b*) *The Lake St. Clair* and *The Underwriter* (1876), 2 App. Cas. 389.

(*c*) *The Seringapatam* (1849), 5 Not. of Cas. 61, 65.

she knows what the regulations require her to do. A wrong step taken by a ship in ignorance of the other's course will cause her to be held in fault if a collision ensues. Article 17.

Hence arise cases of great perplexity to seamen. A ship, A hard case. A., close-hauled on the port tack, sees a red light of another, B., ahead, and a point or two on his starboard bow. He cannot make out what is B.'s course. Not knowing which Article of the regulations applies to his case, A. stands on, and at the last moment bears up, thinking, erroneously, that B. is close-hauled on the starboard tack. At the same moment, B., who has the wind free, bears up. A collision follows, for which A. is probably held in fault, because he did not keep his course. The temptation for A., on first seeing B., to bear up, go about, wear, or to take other steps which he thinks will avoid risk of collision, without regard to the regulations, is strong.

The following illustration may be suggested:—The wind being north, a ship close-hauled on the port tack and heading E.N.E., sees, within a quarter of a mile, and on her lee bow, a red light. The vessel to which it belongs may be either in stays, and heading N., or she may be close-hauled on the starboard tack, and heading from N.W. to W.N.W.; or, again, she may have the wind free, and be heading from W.N.W. to W. by S. In the first case supposed, the rapid alteration in the bearing of the light as it crossed her bows would assist her in arriving at the conclusion that the other ship was close-hauled on the starboard tack and heading about N.W., and in this case the duty of the first ship is clear—to keep out of the way. On the other hand, if the ship to which the red light belonged were light, under low sail, and making considerable lee-way, the alteration in the bearing of the light would be very slow, and it might easily be mistaken for the light of a ship having the wind free. In this case it would be very difficult for the ship on the port tack to appreciate the actual circumstances of the situation in time to comply with the regulations so as to avoid a collision.

In *The Theodore H. Rand* (d), the ship on the port tack

(d) (1887), 12 App. Cas. 247; *The Killeena*, Ad. Div., Nov. 1891, was a similar case.

Article 17. was held not to be in fault, although she bore up and so caused the collision, because she could not, with reasonable care, have known that the other ship was running free.

Meaning of
"close-
hauled."

A vessel may be close-hauled within the meaning of Art. 17, although she is not lying so close to the wind that she cannot luff a trifle without throwing herself in stays (e). In *The Breadalbane* (f), a brig, heading six points from the wind, and a ship, with her fore-topsail carried away, heading seven and a-half points from the wind, were held to be both close-hauled. A ship sailing full and by, and being kept "a good full," would be close-hauled within Art. 17.

A ship with the wind free must keep out of the way of a ship hove-to, by virtue, it seems, of Art. 17 (a) or Art. 17 (e); for a ship hove-to is close-hauled within the meaning of this Article (g).

Whether a
ship hove-to is
within Art. 17
and required
to keep out
of the way.

It has already been stated (h) that Art. 4, relating to ships not under command, probably does not apply to a ship hove-to in the ordinary course of navigation. Art. 17, therefore, applies to a ship lying-to, so as to require her to keep out of the way, notwithstanding her comparatively helpless condition. In a case (i) decided in 1847 the facts were as follows: *The Lavinia*, a schooner close-hauled on the starboard tack, came into collision in broad daylight with *The London*, a schooner hove-to on the port tack. The crew of *The London* were engaged in reefing her topsail. The helm of *The Lavinia*, which had been lashed a-lee, was put over to port shortly before the collision. *The Lavinia* kept her course up to the moment of collision, and hailed *The London* to port. It was held that *The London* was solely in fault.

In the case of *The Young Alonso*, a dandy-rigged smack, hove-to on the port tack, was held in fault, under Art. 12 of

(e) *The Singapore* and *The Hebe* (1866), Helt, 124; L. R. 1 P. C. 378, 383; *Chadwick v. The City of Dublin Steam Packet Co.* (1856), 6 Ell. & Bl. 771; *The Earl Wemyss* (1891), 6 Asp. M. C. 407. (f) (1882), 7 P. D. 186. So *The Queen Elizabeth*, 100 Fed. Rep. 374, a ship going 6½ points from the wind, with yards braced sharp.

(g) *The Eleanor* and *The Alma* (1865), 2 Mar. Law Cas. O. S.

240; *The Rosalie* (1880), 5 P. D. 245; *The James* (1857), Swab. 60; *The London* (1849), 6 Not. of Cas. 29; *The Blenheim* (1854), 1 Sp. 285; *The Ada A. Kennedy*, 33 Fed. Rep. 623. But see *The Alfredo*, 32 Fed. Rep. 240, where it was held that a sailing ship, hove-to and making no way ahead, should sound a bell and not a horn.

(h) *Supra*, p. 325.

(i) *The London*, 6 Not. of Cas. 29.

the Regulations of 1863, for a collision with *The Rosalie*, a three-masted schooner, close-hauled on the starboard tack. The collision was in the daytime in clear weather, and *The Rosalie* (*k*) was held to be also in fault. It does not appear that either vessel did anything to avoid the collision. On the other hand, in a recent Canadian case, a ship hove-to on the port tack was held not to be in fault for a collision, on the ground that she was practically helpless and could do nothing to avoid it (*l*).

The following American case is instructive upon a point which does not appear to have been sufficiently considered in the English cases. A schooner, with the wind free, was in collision with a pilot boat lying-to with her helm lashed a-lee. The pilot boat was forging ahead at the rate of about a knot an hour, as she kept coming to and falling off. Both vessels were, in 1866, held by the District Court of the United States to be in fault for the collision: the schooner for not keeping out of the way of a vessel which was "close-hauled," and the pilot boat for not keeping her course. The Court said that the proper course for those on board the pilot boat to have taken was to get way on her, so as to keep a steady course (*m*). This seems a reasonable decision as regards the duty of the pilot boat. It may well be doubted whether heaving-to in the track of ships and lashing the helm a-lee (*n*), in order to save the trouble of a hand at the helm, is not in itself negligence for which the ship should be held liable in case of collision (*o*). A vessel so situated is practically helpless to keep out of the way herself; and her lights are misleading to other ships because of her unsteady course and the lee-way she makes. It is a common practice for shrimpers in the Thames, and trawlers in the North Sea, to leave their vessels to drive with the tide in the manner described above. Line fishermen in the Channel and in the North Sea lower their head sails and ease off the main sheet. A vessel so handled

Article 17.

Heaving-to
in the track
of ships.

(*k*) (1880), 5 P. D. 245.

(*l*) *The Paramatta*, Stockton's V. Ad. Dig. Canada, 192.

(*m*) *The Transit*, 3 Bened. 192. Cf. *The Haverton*, 31 Fed. Rep. 563.

(*n*) See *The General Gordon*

(1892), 7 Asp. M. C. 317.

(*o*) See *The Eleanor* (1865), 2 Mar. Law Cas. O. S. 240. Cf. *The Admiral Schley*, 115 Fed. Rep. 378. In *The Columbian*, 100 Fed. Rep. 991, it was not held to be negligence.

Article 17. is wholly out of control, and in case of collision may be held in fault, even though it is the duty of the other vessel to keep out of her way under Art. 20 or Art. 26 (*p*). It is submitted that a ship hove-to is required to exercise more than ordinary care, so that she may not be an obstruction to navigation (*q*). A tug drifting about in the track of ships without sufficient steam to get way upon her has been held in fault (*r*).

A ship that is bound to keep her course fails in her duty if, before the risk of collision is determined, she starts to reef, and thereby goes into collision by reason of the lee-way she makes before her canvas is full again (*s*).

Application of steering and sailing rules to ship dead in the water.

The steering and sailing rules are framed primarily for ships that are moving through the water; and it has been doubted whether they apply to ships lying dead in the water, and unable effectually to comply with them (*t*). It would seem, however, that, so far as they can, they must do so.

Sailing fishing vessels at work.

Art. 26 makes Art. 17 inapplicable as between an encumbered fishing vessel under sail and any other sailing vessel except another encumbered fishing vessel; it is the duty of the other vessel to keep out of the way of the fishing vessel, who should therefore in all cases keep her course and speed in accordance with Art. 21 (*u*).

The following cases, decided under former regulations, illustrate the application of Art. 17, and the circumstances under which it may be departed from:—

Cases illustrating Art. 17.

. Two ships were turning to windward in a narrow channel, both on the starboard tack, and one following in the wake of the other. The leading ship, having stood as far towards the side of the channel as was prudent, went about. There was risk of collision if the other ship stood on. It was held that it was the duty of the following ship, although on the starboard tack, to go about when the leading ship did so (*x*).

(*p*) See note (*o*), *supra*.

(*q*) See *The Attila*, 5 Quebec L. R. 340.

(*r*) *The Byron*, 2 New South Wales L. R. Ad. 1.

(*s*) *The Robert H. Rathbun*, 88 Fed. Rep. 549.

(*t*) See *The James T. Easton*, 27

Fed. Rep. 464.

(*u*) See the cases cited under Art. 9, *supra*, p. 337; and Art. 26, *infra*, p. 431.

(*x*) *The Priscilla* (1870), L. R. 3 A. & E. 125; and see *The Lake St. Clair* and *The Underwriter* (1877), 3 Asp. M. C. 361, *infra*.

Where, however, two sailing flats were beating to windward down the Mersey, and in the process of tacking backwards and forwards across the river the one gradually overtook the other, but before she had quite done so, and while the vessels were still on opposite tacks, they came into collision, it was held that the present Art. 17 applied, and that the overtaken vessel, which was close-hauled on the port tack, was at fault for not keeping out of the way of the overtaking vessel, which was close-hauled on the starboard tack (*y*).

In a case where the courses of the two ships were within a point of being directly opposite (W.N.W. and S.E. by E.), the Privy Council held that they were "crossing," and not "meeting," ships (*z*).

Where two vessels close-hauled on opposite tacks sighted each other at so short a distance that it was not possible for the ship on the port tack to avoid the other if the latter stood on, it was held that it was the duty of the latter to port and let go her head sheets (*a*).

Where a ship close-hauled on the port tack was unable to bear up owing to her head-gear being carried away, and the other ship, in ignorance of her disabled condition, kept her course, a collision which followed was held to be an inevitable accident (*b*).

Two heavy full-rigged ships were turning to windward in the St. Lawrence. One of them, *The Lake St. Clair*, whilst in stays, was struck by the other, *The Underwriter*, nearly at right angles on the starboard side. Those on board *The Underwriter* could not see that *The Lake St. Clair* was in stays in time to avoid her; but they might have avoided her if they had ported their helm when hailed to do so. *The Underwriter* was held in fault for not porting, and *The Lake St. Clair* for not having braced her head yards aback, and for having hauled her fore-yard (*c*).

The wind being somewhere from S. to S.S.E., the sloop *Constantine*, heading N.N.E., fell in with the cutter *Spring*

(*y*) *The Annie*, (1909) P. 176; *The Priscilla* (*supra*) distinguished.

(*z*) *The Constitution* (1864), 2 Moo. P. C. (N. S.) 453.

(*a*) *The Lady Anne* (1851), 15 Jur. 18.

(*b*) *The Aimé* and *The Amelia* (1874), 2 Asp. M. C. 96.

(*c*) *Wilson v. Canada Shipping Co., The Lake St. Clair and The Underwriter* (1877), 2 App. Cas. 389.

Article 17.

heading W. by S., and to leeward. It was held that it was the duty of *The Constantine* to keep out of the way, and that the duty of *The Spring* was to keep her course (d).

A full-rigged ship, with the wind free, crossing a brig and a schooner close-hauled on the same tack, was held in fault for approaching them so close that, upon the schooner going about, a collision with the brig was inevitable (e).

A ship just gathering way on the port tack, after going about, was held free from blame for a collision with another close-hauled on the starboard tack, which had approached her too near whilst in stays (f).

A collision occurred between the barque *St. Jean* and the barque *Privateer*. *The St. Jean* had the wind on the port side about two points free. *The Privateer* had the wind somewhere between dead aft and three points on the starboard quarter. It was held (in Ireland) that it was the duty of *The Privateer* to keep out of the way (g), either by virtue of the Regulation of 1880, corresponding to Art. 17 (a), or Art. 17 (e). The case of *The Singapore* (h) was relied on as an authority for the proposition, that a vessel heading as much as eight points from the wind is "close-hauled" within the meaning of the regulations. In that case a laden barque was heading seven points from the wind, and was held to be close-hauled. It is submitted that *The Singapore* is an extreme case, and that a vessel heading more than seven points from the wind cannot be properly said to be close-hauled.

A brig was heading E. by N. on the starboard tack, close-hauled, and a ship, also on the starboard tack, and said to be close-hauled (i), heading N.E. by E. half E., was to windward of her. Each vessel pleaded that the other, when first seen, was about four points abaft her own (i.e., the complainant's) beam. It appears to have been held that the allegation of the brig was proved—that the ship was overtaking the brig; and that her duty, therefore, was to keep

(d) *The Spring* (1866), L. R. 1 A. & E. 99.

(e) *The Mobile* (1857), Swab. 69; on app. *ibid.* 127; this case was under a former Act.

(f) *The Charlotte Raab*, Brown, Ad. 453.

(g) *The Privateer*, 7 L. R. Ir. 105.

(h) (1867), L. R. 1 P. C. 378.

(i) She had carried away her fore-topsail shortly before the collision.

out of her way. But the case is not satisfactory, for the Court appears to have been of opinion that the ships were, in fact, not within the overtaking rule, but within Art. 17 (*k*).

Article 17.

Two ships, close-hauled on opposite tacks, were crossing each other. The ship on the starboard tack was held in fault for not keeping out of the way when the other, being ahead and to windward, could not bear up without risk of collision, and could not go about because of a shoal (*l*).

A sloop, with the wind free, was running through a narrow channel against a strong tide close to the shore. Two schooners, the combined length of which was equal to half the breadth of the channel, were beating to windward in the opposite direction. It was held that the sternmost of the schooners was in fault for standing on when under the stern of the leading schooner, so that when she was obliged to go about she ran into the sloop, which could not avoid her without going ashore (*m*).

ARTICLE 18.

Article 18.

Where two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

Two steam vessels meeting.

This Article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and, by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases

(*k*) *The Breadalbane* (1882), 7 16 Davis, 349, 354.
P. D. 186.

(*l*) *The Ann Caroline*, 2 Wall.

(*m*) *The Mark Eveline*, 16 Wall.
348.

538. Cp. *The Maggie J. Smith*,

Article 18.

where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

This Article is identical with Art. 18 of the Regulations of 1897, and almost identical with Art. 15 of 1884. It is a modification of the "port helm" rule for meeting ships first imposed by the Act of 1846 (*n*), and contains the substance of Art. 13 of the Regulations of 1863, and of an Order in Council of the 30th of July, 1868, explaining the meaning of "end on." The interpreting order is said to have been made in consequence of the decision in *The Cleopatra* (*o*), by which the port helm rule of a former Act (*p*) was held to apply where the ships were on parallel courses green to green, each being on the starboard bow of the other (*q*).

As to Art. 16 overriding the steering and sailing rules, see *supra*, p. 364.

The words "each shall alter her course to starboard" are exactly equivalent to "the helms of both shall be put to port" of the Regulations of 1863 (*r*). The words "so that

(*n*) 9 & 10 Vict. c. 100, s. 9. This rule was, in substance, re-enacted in the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 27, and the rule under the Merchant Shipping Act, 1854.

(*o*) (1857), Swab. 135. The case was followed in *The Arabian*, 2 Stuart's V.-Ad. Rep. 73.

(*p*) 17 & 18 Vict. c. 104, s. 296.

(*q*) See *The Odessa* (1882), 4 Asp. M. C. 493.

(*r*) The alteration in the wording of the regulations was probably made with a view to a possible uniformity of system amongst the seamen of all nations as regards orders to the helm. In English ships the order which sends the ship's head to starboard is "port!" In France the equivalent order is "tribord!"—the literal translation of which is "starboard." In *London School Board v. Lardner*, Times, 20th Feb. 1881, a Thames

pilot was held liable for a collision caused by his giving the order in French, "tribord!" with the intention of sending his ship's head to port. The man at the helm, a Frenchman, carried out the order in the French custom, by putting his helm to port, and thereby caused the collision. Some nations, including America, Austria, and Italy, adopt the English system, others the French; with the Scandinavian nations, the practice is said to vary in different ships. Since pilots of one nation are frequently in charge of ships of another nation, it is manifest that a uniform system is very desirable. The apparent paradox involved in the English system originated with the use of the tiller, the movements of which are opposite to those of the ship's head. Most vessels being now steered by a wheel, and the tiller being frequently aft of the

each may pass on the port side of the other” appear to be merely explanatory. Article 18.

As to the meaning of “so as to involve risk of collision,” see above, p. 304.

In the existing regulations vessels approaching each other are described as “meeting” (*s*), “crossing,” and “overtaking,” or being overtaken. It appears that this classification is intended to include all cases of ships approaching or being approached by others. It is in fact a cross classification, for although no ship that is a “crossing” ship can at the same time come within the rule for “meeting” ships, yet a “crossing” ship may at the same time be “overtaking,” in which case she must conform not to the “crossing” rule, but to the “overtaking” rule in Art. 24 (*t*).

A ship is “crossing” another whenever the lines of their courses, being prolonged, intersect; and not the less so because one ship is heading for the midships, or some other part of the hull, of the other (*u*).

This and the following Articles which deal with steamships under way assume that both have way through the water. Whether they apply at all to a steamship lying dead in the water seems doubtful. Apart from the regulations, a vessel

Classification of ships into meeting, crossing, and overtaking ships.

Ship heading straight for the other.

Does Art. 18 apply to a ship dead in the water?

rudder-head, the orders to the helm are altogether anomalous. With a wheel, and a tiller aft of the rudder-head, the order to send the ship's head to starboard is still “port!” whilst the wheel, the tiller, and the ship's head all move together in the same direction, to starboard. It is stated that in most French ships the tiller chains are so rove that the wheel turns to port as the ship's head goes to starboard. From Sir H. Manwayring's *Seaman's Dictionary* (1644), it appears that the existing practice is at least as old as the early part of the seventeenth century. Probably it has been the same since rudders and tillers were invented. It must be remembered that, when going astern, the action of the rudder is reversed, and that the order “port!” and corresponding movement of the rudder to starboard, send the ship's head to port.

Another source of confusion exists in the absence of a uniform system of orders to the helm given by the hand of the pilot or officer on the bridge. In some waters, the order to starboard the helm is given by extending the right hand, in others by extending the left.

(*s*) “Meets,” in 17 & 18 Vict. c. 104, s. 296, had a wider meaning than “meeting” in the existing regulations. See *The Cleopatra* (1857), Swab. 135; see also *The Inflexible* (1857), Swab. 32, as to the application of sect. 296.

(*t*) See Arts. 17, 19, and 24. As to the distinction between “meeting” and “crossing” ships, see *The Franconia* (1877), 2 P. D. 8; *The Peckforton Castle* (1878), 8 P. D. 11; *The Breadalbane* (1882), 7 P. D. 186; *The Seaton* (1884), 9 P. D. 1; *The Columbia*, 10 Wall. 246.

(*u*) *The Oceanic*, 61 Fed. Rep. 338.

Article 18. so situated has no right to put her engines ahead, so as to cross the bows of, or so as to embarrass, another obviously intending to pass her on one side or the other (*x*).

Abolition of the rule of "port helm" except in one case.

The rule contained in Art. 18 is not identical with the "port helm" rule of former Acts, or with the older practice of seamen mentioned in a former page (*y*). The existing regulations limit the application of the "port helm" to one case only, namely, where both the ships are steamships (*z*), and they are proceeding in directly opposite directions on the same line, or nearly so. In every other case the "port helm" rule is inapplicable, and the two ships must act as required by the particular Article applicable to the case. There is reason to think that the important alteration of the law effected by the Regulations of 1863 has not even yet produced a corresponding change in the practice of all seamen. The proper application of the "port helm" rule in its existing shape requires the careful attention of seamen. Its indiscriminate application has been a fruitful source of collision.

Case of steamship making over the ground a course different from the direction of her head.

It appears from the explanatory part of Art. 18 that the application of that Article is determined, not by the directions in which two ships are approaching each other over the ground, but by the directions in which their heads are pointing. The case of a steamship crossing a tideway, of a vessel dropping up stern foremost with the tide and guiding herself with her helm and anchor (*a*), or of a tug with a heavy ship in tow making considerable lee-way, so that she is approaching another vessel upon a course over the ground directly opposite to that of the other, but in a direction different from that in which her head is pointing, does not seem to be expressly provided for. It will be noticed that under the existing regulations there is no "end on" rule for sailing ships, as there was under the Regulations (Art. 11) of 1863.

Both ships must port;

"Altering her course to starboard" under Art. 18 means

(*x*) *The Bristol*, 11 Fed. Rep. 156.

(*y*) Page 53. As to the application of the "port helm" rule of the Merchant Shipping Act, 1854, see *The Arthur Gordon* and *The Independence* (1860), Lush. 270; and see cases cited, n. (*t*),

and p. 382, *infra*.

(*z*) 17 & 18 Vict. c. 104, s. 296, applied to a steamship and also to a sailing ship: *The Ann* (1860), Lush. 55.

(*a*) As in *The Smyrna*, mentioned *arguendo* in *The George Arkle* (1860), Lush. 382.

altering sufficiently to take her clear if the other ship does not starboard (*b*). The law is that both ships are to alter their courses to starboard, and the neglect by one to obey the law will be no excuse to the other, although there would have been no collision if one had ported (*c*). Where a ship is in a position to which Art. 18 applies, and she alters her course sufficiently to determine the risk of collision, she is not necessarily required at the same time to slacken her speed under Art. 23 (*d*). There is, however, some obscurity as to the circumstances under which Art. 23 applies. It has been held to apply where there will be risk of collision if the vessels continue to approach each other (*e*).

Article 18.

neither need
slacken after
risk is deter-
mined.

If two steamships sight each other nearly right ahead, but so that each is a little on the starboard bow of the other, the law requires each to put her helm to port, although a collision would be avoided if each were to starboard, and that appears to be the safer and more convenient course. “It is essential that the law should be universally observed. If one obeys and the other does not, the utmost confusion and danger will be introduced. A vessel which obeys the law has a right to trust that the vessel which she meets . . . will obey it too, and she acts accordingly” (*f*).

The meaning of “nearly end on” has not been exactly defined. Vessels upon parallel and opposite courses, each with the other nearly right ahead, and vessels upon courses making with each other an angle of two, or even three, points, were, before the interpretation of the term by Order in Council of the 30th July, 1868, held to be meeting “nearly end on.” But in a case where the courses of the two ships were within a point of being directly opposite (W.N.W. and S.E. by E.) the Privy Council decided that the ships were

What is
“nearly
end on”?

(*b*) *The Jesmond and The Earl of Elgin* (1871), L. R. 4 P. C. 1.

(*c*) See *The America*, 2 Otto, 432; *The Black Prince*, *infra*; *Little v. Burns* (1881), 9 Ct. of Sess. Cas. 4th ser. 118; *The Mary C. Elphicke*, 115 Fed. Rep. 375.

(*d*) *The Earl of Elgin*, *supra*; *Wilson v. Currie*, (1894) App. Cas. 116.

(*e*) See *per Brett, M. R.*, *The Beryl* (1884), 9 P. D. 137, 141, *infra*, p. 391, note (*e*); and see *supra*, p. 304.

(*f*) *Per Lord Kingsdown in The Araxes and The Black Prince* (1861), 15 Moo. P. C. 122; and see *The Cleopatra* (1857), Swab. 135. These cases were under 17 & 18 Vict. c. 104, s. 296. See also *Little v. Burns*, *ubi supra*.

Article 18. "crossing," and not "meeting" (*g*). In a case subsequent to the Order in Council, vessels upon courses within one-and-a-half points of being directly opposite (S.S.W. and N.E. $\frac{1}{2}$ N.) were held to be not end on (*h*). In another case (1870), two steamships going (*semble*) N.N.W. and S.E. were held to be "nearly end on" (*i*). And in a Scotch case, two vessels proceeding up and down the Clyde were held to be end on, each being about half a point on the starboard bow of the other (*k*).

It would seem that Art. 18 cannot apply to two ships rounding in opposite directions a promontory or a bend in a winding channel, and in such a position that the red light of one is opposed to the green of the other. In the former case it would seem that obedience to Art. 19, with due regard to the considerations to which attention is drawn in Art. 27, would result in safety (*l*), and in the latter Art. 25 applies, where not superseded by local rules (*m*).

It should be noticed that there is no "end on" rule in force in the River Thames. The corresponding Article of the Thames rules has a wider application than the Article under consideration (*n*).

ARTICLE 19.

Article 19. *When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.*

Two steam
vessels
crossing.

This Article is identical with Art. 19 of the Regulations of 1897, and corresponds with Art. 16 of 1884 and Art. 14 of 1863, from which it differs only verbally.

As to the meaning of "risk of collision," see above, p. 304; as to the distinction between ships "meeting," "crossing,"

(*g*) *The Constitution* (1864), 2 Moo. P. C. 453. *Aliter* in *The Myrtle*, 44 Fed. Rep. 779.

(*h*) *The Rona* and *The Ava* (1874), 2 Asp. M. C. 182.

(*i*) *The Jesmond* and *The Earl of Elgin* (1872), L. R. 4 P. C. 1.

(*k*) *Little v. Burns, The Owl* and *The Ariadne* (1881), 9 Ct. of

Sess. Cas. 4th ser. 118.

(*l*) See, however, *The Velocity* (1869), L. R. 3 P. C. 44, 51, as to the application of the "crossing" rule, and *infra*, p. 384.

(*m*) See *The Velocity* (1869), L. R. 3 P. C. 44.

(*n*) See cases under Thames rule, *infra*, p. 384 *seq.*

and "overtaking," p. 416; as to how a ship is to "keep out of the way," see Arts. 22 and 23, and above, p. 369; as to the duty of the ship, which has the other on her port side, to keep her course, see Art. 21; and as to Art. 16 overriding the steering and sailing rules, p. 364.

Article 19.

A vessel astern, or on the quarter of, another, and overtaking her, is an "overtaking" vessel within the meaning of Art. 24, and not a "crossing" vessel within Art. 19; she must therefore keep out of the way, whatever the position of the other may be, whether on her own port or starboard side. This was so under the Regulations of 1884 (*o*), and the definition of an "overtaking" vessel in the existing regulations (Art. 24) removes any doubt which formerly existed upon the point. On the other hand, a vessel coming up with another from any direction less than two points abaft the beam of the latter is "crossing" and not "overtaking" her, and must comply with Art. 19 (*p*).

Overtaking ship; definition.

Art. 19 must be read with Art. 24. The principle of Art. 24 is "once an overtaking ship, always an overtaking ship"; in other words, if a ship once comes within the obligation of Art. 24—if she is overtaking another ship with risk of collision—it is her duty under that Article to keep clear of the ship ahead, not only so long as she is two points or less abaft her beam, but after she draws up to her, so that, if she were not going faster than the other, she would be crossing her within the meaning of Art. 19. For the purpose of determining whether or no Art. 19 applies, the relative speed of the two ships is immaterial.

"Steam vessel" is defined by the preliminary Article (*supra*, p. 312). A tug or other steam vessel with a ship in tow must comply with Art. 19, as with the other steering or sailing rules (*q*).

Steam vessel.

When two vessels, not end on, are likely, if each keeps the course to be expected of her, to arrive at the same point at or nearly at the same moment, they are crossing so as to involve risk of collision, and the vessel having the other on her star-

When the rule comes into operation.

(*o*) *The Seaton* (1884), 9 P. D. 1, *infra*, p. 420; *The Molière*, (1893) P. 217.

(*p*) See *The Main* (1886), 11

P. D. 132; *The Imbro* (1889), 14 P. D. 73, 77; both cases under the Regulations of 1884.

(*q*) See *supra*, p. 193.

Article 19. board side must take steps to keep out of the way (*r*). The rule applies not only in the open sea, but to cases in which two steamships are approaching from different directions, and on intersecting courses, a buoy, lightship, headland or other point, at which each must in the ordinary course of navigation alter her course (*s*).

Application
in narrow
channels
affected by
Art. 25.

Art. 19 does not override, but must be read together with, Art. 25 (*t*). In a winding river, the relative headings of two vessels may be such that they would be "crossing so as to involve risk of collision" if they were in the open sea, but, by reason of Art. 25, which requires them to navigate on the starboard side of the channel, the "crossing" rule of Art. 19 is not applicable, and the vessel which has the other on her starboard side must keep clear of the latter by keeping on the starboard side of the channel, and not by crossing the course of the other ship.

Application
of Art. 19 in
a winding
river.

There have been some important decisions as to the application of the "crossing" rule in winding rivers. The steamship *Carbon*, coming up the Thames on the flood tide, and rounding a point where the river turns to starboard, under a port helm, saw a little on her starboard bow the masthead and red lights of *The Velocity*, a steamship coming down the river. In that part of the river it is usual for ships bound down to keep near the north shore. It was held that the ships were not "crossing" ships, and that *The Carbon* was wrong in porting and attempting to pass to the north of *The Velocity*. It was held by the Privy Council that the duty of each ship was to continue her course round the point in the usual track, in which case they would have passed clear (*u*).

(*r*) *The Pekin*, (1897) App. Cas. 532, 536; *The Albano*, (1907) App. Cas. 193; *The Fancy*, (1917) P. 13.

(*s*) *The Leverington* (1886), 11 P. D. 117; *The Chittagong*, (1901) A. C. 591; dist. *The Pekin*, *supra*; but see *The Red Cross* (1906), 10 Asp. M. C. 521; *The Ashton*, (1905) P. 21; *The Ada*, *The Sappho* (1873), 2 Asp. M. C. 4; *The Albano*, (1907) A. C. 193; *The Roanoke*, (1908) P. 231. As to correlative duty to keep course and speed, see under Art. 21, p. 409.

(*t*) *The Leverington* (1886), 11 P. D. 117; dist. *The Pekin*, (1897) App. Cas. 532; also *The Ashton*, (1905) P. 21; and see *The Ravenna*, (1918) P. 26.

(*u*) *The Velocity* (1869), L. R. 3 P. C. 44. See also *The Cologne* and *The Ranger* (1873), L. R. 4 P. C. 519; *The Esk* and *The Niord* (1871), L. R. 3 P. C. 436; *The Pekin*, (1897) App. Cas. 532; and the observations of James, L. J., on *The Velocity* in *The Oceanic* (1878), 3 P. D. 60.

Article 19.

The case of *The Velocity* was decided upon the general or sea Regulations of 1863, and before any special rules for the Thames were in force. According to this case, it appears that in winding rivers, and channels where no special rules are in force, two ships on opposite sides of a point, and rounding the bend, are not always, or for that reason alone, "crossing" ships. But it is not clear that this decision would be followed where the "crossing" rule has been in terms enacted for the regulation of navigation in a winding river. In *The Oceano*, decided under a Thames rule, practically identical with the present Art. 19, a steamship proceeding up the river, against an ebb tide, and in a reach of which the direction is S.W., was crossing the channel obliquely in order to clear a ship in her path. Whilst so doing, there was, on her starboard side, and in the reach above her, of which the direction is about W.N.W., another steamship coming down. The collision occurred about the meeting of the two reaches. It was held by the Court of Appeal that the ships were crossing ships, and that it was the duty of the vessel bound up the river to keep out of the way (*x*).

The Pekin (*y*) raised the same question, as to the operation of the crossing rule in a winding river, and *The Velocity* was followed. Probably *The Oceano* was considered to be inapplicable, because, for the Whangpoo river, where the collision occurred, no crossing rule had been expressly enacted.

A steamer bound for Penarth Dock, and showing the usual docking signal, was held not to be relieved from the duty of keeping out of the way of another steamer which was coming down Cardiff drain on her starboard bow (*z*).

The crossing rule does not apply as between vessels leaving docks, or coming out between breakwaters, and other vessels passing outside. The vessel emerging must be navigated with the utmost caution, but the other vessel should be manœuvred with consideration for the difficulties of the

Vessels
leaving dock
and getting
under weigh.

(*x*) *The Oceano* (1878), 3 P. D. 60. See also as to the duty of two ships rounding a bend in a river, one outside the other, *The Bywell Castle* (1879), 4 P. D. 219.

(*y*) (1897) App. Cas. 532; fol-

M.

lowed in *The Victory* and *The Plymothian*, 168 U. S. Rep. 410; *The L. C. Waldo*, 100 Fed. Rep. 502.

(*z*) *The St. Audries* (1887), 5 Asp. M. C. 552; cp. *The Winstanley*, (1896) P. 297.

Article 19.

emerging vessel arising from obstructions, which prevent her from moving freely in all directions (*a*). A vessel, by getting under weigh when another is approaching, cannot put the other into the position of the give-way ship under this rule (*aa*).

For cases relating to the duty of a merchantman to keep out of the way of a fleet of warships, see under Art. 27, p. 439.

ARTICLE 20.**Article 20.**

Sailing ship
and ship
under steam.

Where a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

This Article is identical with Art. 20 of 1897, and corresponds with Art. 17 of 1884, and Art. 15 of 1863, from which it differs only verbally.

As to "risk of collision," see above, pp. 304 *seq.*; as to how to "keep out of the way," p. 369, and Arts. 22 and 23; as to the duty of the sailing ship to keep her course, see Art. 21; and as to Art. 16 overriding the steering and sailing rules, see p. 364.

What is
"proceed-
ing."

A steamship hove-to under canvas, or steaming head to sea, but practically stationary, would probably be held to be "proceeding" (*b*); also a sailing ship in a flat calm (*c*).

Stationary
vessel.

The fact that a steam trawler is lying with engines stopped, and more or less stationary in the water, will not excuse her from performing a duty to keep out of the way under this Article (*d*).

Reason of the
rule that a
steamship
must keep
out of the
way.

The reason of the rule of Art. 20 is said to be that a steamship is more completely under command than a sailing ship. She can go ahead in the teeth of the wind, and she can stop or go astern, as she pleases (*e*). This, however, is true only to a limited extent in the case of a tug with a ship in tow; and in approaching her the other ship must take her encumbered condition into consideration (*f*). In America a schooner

(*a*) *The Sunlight*, (1904) P. 100; *The Red Cross* (1907), 10 Asp. M. C. 521; *The Hazelmere*, (1911) P. 69; *The Llanelly*, (1914) P. 40.

(*aa*) *The Ravenna*, (1918) P. 26.

(*b*) See *The Jennie S. Barker* (1876), 3 Asp. M. C. 42; *The Sunnyside*, 1 Otto, 208; *The Byron*, 2 New South Wales L. R. Ad. 1.

(*c*) *The Colorado*, 59 Fed. Rep. 300.

(*d*) *The Broomfield* (1906), 10 Asp. M. C. 194. The trawler was not fishing.

(*e*) *The Arthur Gordon and The Independence* (1860), Lush. 270. Cp. the Trinity House rule of 1840.

(*f*) *The Arthur Gordon*, *supra*; *The Gula and The Zenobia* (1865), Holt, 112.

was held in fault for not holding herself in stays to allow a tug with a fleet of barges in tow to pass (*g*). But the tug is a steamship within the meaning of Art. 20; and must comply with that Article, so far as she can (*h*). In narrow waters it is frequently dangerous for a long and heavy steamship to keep out of the way, where the sailing ship can do so without difficulty. But, if it is possible, the law requires the steamship to keep out of the way.

Article 20.

The duty of the steamship under Art. 20 is the same, whether the sailing ship is close-hauled or free, and whether she is on the port or starboard tack. If the steamship is crossing the course of the sailing ship, and at the same time overtaking her, she is required to keep out of the way by Art. 24 as well as by Art. 20. If she is meeting the sailing ship end on, or nearly end on, she is not required by the regulations to pass on one side rather than the other; she may "keep out of the way," under Art. 20, as she thinks best. If she is being overtaken by the sailing ship, by Arts. 24 and 22 she is required to keep her course and speed (*i*).

Duty of a steamship meeting, crossing, and overtaking a sailing ship.

The difference between the rule contained in Art. 20 and the old rule of "port helm" should be observed. In the case of a sailing ship with the wind free meeting a steamship end on, her duty is to keep her course, and not, as has been supposed, to put her helm to port (*k*).

The old rule of "port helm."

The obligation which Art. 20 throws upon a steamship in every case where there is risk of collision with a sailing ship is heavy. "It is the duty of a steamer where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done, consistently with her own safety, in order to avoid collision" (*l*). At the same time, "When a steamer is condemned for having omitted to do something which she ought to have done, it seems just to require proof of three things: first, that the thing omitted

Heavy obligation on steamships.

(*g*) *The W. C. Redfield*, 4 Bened. 227.

(*h*) See *supra*, p. 193.

(*i*) Under the Regulations of 1863, there was a doubt as to the duty of a steamship being overtaken by a sailing ship. See *The Philotaxe*, 3 Asp. M. C. 512.

(*k*) *The Bougainville and The Jas. C. Stevenson* (1873), L. R. 5 C. P. 316.

(*l*) *Per Westbury, C.*, in *Inman v. Reck. The City of Antwerp and The Friedrick* (1868), L. R. 2 P. C. 25, 30, 34.

Article 20.

to be done was clearly in the power of the steamer to do; secondly, that, if done, it would in all probability have prevented collision; and, thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer" (*m*). It would seem to follow from this that the mere fact that a ship required to keep out of the way has been in collision is not evidence of negligence on her part (*n*), but proof of a breach of a regulation is proof of negligence, and it is submitted that the burden is on the steamer to excuse her breach (*o*).

The duty of the steamship has been thus defined by the Supreme Court of the United States: "The rules require, when a steamship and sailing vessel are approaching from opposite directions or on intersecting lines, that the steamship, from the moment the sailing vessel is seen, shall watch with the highest diligence her course and movements, so as to be able to adopt such timely measures of precaution as will necessarily prevent the two boats coming into contact" (*p*).

And of a tug
with a heavy
ship in tow.

The fact of a tug having a heavy ship in tow, and a strong head wind against her, does not justify the tug in departing from Art. 20, and neglecting to keep out of the way of a sailing ship (*q*). A steamship of 1,356 tons was held in fault for not keeping out of the way, although she had in tow a disabled vessel of 1,495 tons, with a long scope of tow-rope, so that the towage was a service of difficulty (*r*). But very exceptional circumstances may throw the obligation of keeping out of the way upon the sailing ship. Thus a sailing ship running ten or twelve knots before a strong wind, and crossing the course of a tug going two or three knots with a long and heavy fleet of barges in tow, has, in America, been held in fault for not keeping out of the way; probably upon the ground that it was not possible for the tug alone to avoid a collision (*s*).

(*m*) *Per* Westbury, C., *ibid*.

(*n*) In America a different view as to the burden of proof seems to be taken. See *The R. R. Kirkland*, 48 Fed. Rep. 760.

(*o*) See *supra*, pp. 40, 57. See also *The Khedive* (1880), 5 App. Cas. 876, as to a vessel being held to blame for a breach of regulations without a failure in skill or care on the part of the master.

(*p*) *The Carroll*, 8 Wall. 302, 306; *The Lucille*, 15 Wall. 676. *The Falcon*, 19 Wall. 75, is to the same effect.

(*q*) *The Warrior* (1872), L. R. 3 A. & E. 553.

(*r*) *The American* and *The Syria* (1874), L. R. 6 P. C. 127.

(*s*) *The Rose Culkin*, 52 Fed. Rep. 328; *The A. P. Cranmer*, 8 Fed. Rep. 523. *The Howard*

The rights and obligations of fishing vessels encumbered with their fishing gear have been considered under Art. 9, *supra*, p. 337.

Article 20.

Duty of steam fishing vessels.

Duty of the sailing ship.

The duty of the sailing vessel is to keep the course upon which she was when the other vessel was sighted; but where a sailing ship, when at a distance of two miles from the steamship, altered her helm slightly, it was held that she was not therefore in fault for the collision (*t*). The mere fact that a steamer is taking no step to keep out of the way will not cast upon the sailing ship the duty of manœuvring, for the steamer is able to manœuvre and keep out of the way even when the sailing ship is very close to her (*u*). But in the Thames, in a case where it was unsafe and impracticable for a steamer to keep out of the way of a sailing barge, and the steamer gave the signal prescribed by r. 21 of the Thames Byelaws, the barge was held to blame for not keeping out of the way (*x*).

A sailing ship in a fog, being aware of the proximity of a steamship under way, will not be held free from blame if she simply keeps on her course and does nothing. It is her duty to be on the alert, with her people stationed at the sheets and braces ready to let them fly and haul the yards, if necessary, so as to assist the helm in case the steamship comes into view at so short a distance that a collision can be avoided only by action on the part of the sailing ship (*y*).

A sailing ship turning to windward in the Thames went about when she got to the edge of the tide without giving any notice to a steamship astern of her. The steamship was held solely in fault for a collision which followed (*z*).

Cases illustrating Art. 20.

A barque, rounding-to before coming to an anchor, was held not to be in fault for a collision with a steamship, although the steamship alleged that she was baffled by the rapid change of the barque's lights, and that the collision was caused by the barque's departure from the rule requiring

Carroll, 41 Fed. Rep. 159, shows the limit of this indulgence to the tug.

(*t*) *The Norma* (1876), 3 Asp. M. C. 272.

(*u*) *The Highgate* (1890), 6 Asp. M. C. 512.

(*x*) *The Longnewton* (1888), 6 Asp. M. C. 302.

(*y*) *The Zadok* (1884), 9 P. D. 114, 118.

(*z*) *The Palatine* (1873), 1 Asp. M. C. 468.

Article 20.

her to keep her course (a). But a steamship rounding-to in the Clyde was held in fault for not warning a ship astern of her intention to bring up (b).

But a sailing ship must not go about at an improper time or place so as to embarrass the steamship (c).

ARTICLE 21.

Article 21.

Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed.

NOTE.—When in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See Arts. 27 and 29.)

This Article is identical with Art. 21 of the Regulations of 1897, and corresponds with Art. 22 of 1884; but there was a notable alteration made in 1897, when the words “and speed” were inserted. The note was also then added, but so far as it only calls attention to the subsequent Arts. 27 and 29, it makes no alteration in the law. Whether the effect of the words “take such action as will best aid to avert collision” is limited by the reference to those Articles is not clear.

The regulations which require one of two vessels to keep out of the way are Arts. 17, 19, and 20. These Articles are supplemented by, and must be read together with Art. 21. Art. 16 overrides all the steering and sailing rules including Art. 21 (*supra*, p. 364).

Art. 21, so far as it requires a sailing ship to keep her speed, appears to be superfluous, since without altering her course (d) she could hardly alter her speed. Setting or shortening canvas, whilst there is risk of collision, might possibly be held to be an infringement of the Article. But with reference to steamships, the words “and speed” made

(a) *The Monsoon v. The Neptune* (1865), 2 Mar. Law Cas. O. S. 289; Holt, 186.

(b) *The Queen Victoria* (1891), 7 Asp. M. C. 9.

(c) *The General Lee* (1869), 19 L. T. 750 (Irish case); *The Poto-*

mac, 8 Wall. 590; *The Mary Ann*, 11 Fed. Rep. 336; and see *infra*, pp. 397, 470, as to a sailing ship beating out her tack.

(d) The decisions show that the word applies to a ship that is by the wind.

Article 21.

an important alteration in the law (e) when read together with the existing Art. 23. Under the Regulations of 1884 (f), a steamship approaching another with risk of collision was required to slacken her speed, or to stop and reverse her engines; under the present regulations, Arts. 21 and 23, being mutually exclusive of each other, cannot apply to the same ship at the same time; and a ship, whose duty it is to keep her course, is under no obligation to slacken her speed or to stop and reverse under Art. 23. The obligation upon her, under the present regulations, is to "keep her course and speed." This does not mean that, after the Article has come into operation, she must make no alteration either in compass course or in the mode in which her engines are being worked. "Course and speed" in this Article "mean course and speed in following the nautical manœuvre in which, to the knowledge of the other vessel, the vessel is at the time engaged" (g). Thus where two steamships were each making for a pilot cutter to pick up a pilot, it was held that the vessel upon whom the duty lay to keep her course and speed was justified in slowing down in order to follow the nautical manœuvre in which she was, to the knowledge of the other vessel, engaged, that is to say, to pick up the pilot (h). Similarly it has been held in a winding river that the direction to "keep her course" does not mean that the ship is to continue going ahead in the direction in which her head happens for the moment to be pointing, without regard to other circumstances, but that she is to continue the course she would pursue if the other vessel were not in sight (i), and a following vessel must watch a

Meaning of
"course and
speed."

(e) It was doubtful under the Regulations of 1884 whether a ship required to keep her course (Art. 22) was at liberty to alter her speed. In *The Beryl* (1884), 9 P. D. 4, Brett, M. R., said that the rule had nothing to do with speed; and in *The Leverington* (1886), 11 P. D. 117, the ship required to keep her course "went on faster," and was not held in fault. On the other hand, in American cases, *The Britannia*, 34 Fed. Rep. 546; 46 Davis, 130; *The Norge*, 55 Fed. Rep. 347, *infra*, p. 398; *The Nutmeg State*, 62 Fed. Rep. 847, the

contrary view seems to have been taken.

(f) Art. 18 of those regulations.

(g) *Per* Alverstone, C. J., *The Roanoke*, (1908) P. 231, at p. 239, applied in *The Echo*, (1917) P. 132.

(h) *The Roanoke*, *supra*; *The Echo*, (1917) P. 132; cf. *The Aureole*, 103 Fed. Rep. 699. Cf. also *The Albano*, (1907) App. Cas. 193.

(i) *The Velocity* (1870), L. R. 3 P. C. 44. In *The Banshee* (1887), 6 Asp. M. C. 221, different opinions upon this point were expressed by members of the Court of Appeal.

Article 21. vessel ahead and observe what course she is taking (*k*). Thus, a vessel rounding a point in a river, and approaching another under circumstances which require her to keep her course under Art. 21, must continue her course round the point in the usual track (*l*).

Art. 21 must
be strictly
observed.

The rule requiring a ship to keep her course and speed must be observed strictly (*m*). So long as there is a possibility of the other ship clearing her, she must stand on. Thus Sir James Hannen refused to find a sailing ship to blame for taking no step, until the last moment, to avoid collision with a steamer which she saw was taking no measures to keep out of the way: "The guide of the steamer's action is the presumption that the sailing vessel will keep her course" (*n*). With reference to the same rule under a previous Act, Dr. Lushington said:—"I wholly deny that danger would be averted, or that infinitely greater danger would not occur, if a vessel close-hauled on the larboard tack, on desecring a steamer, were to take upon herself to deviate from her course for the purpose of getting out of the way; because I am of opinion that by so doing it would lead to the chance of infinitely more collisions than at present" (*o*). The Supreme Court of the United States is equally strict in its interpretation of the rule, and for the same reasons. "The negligence of one (ship) is liable to baffle the vigilance of the other; and if one of the vessels, under such circumstances, follows the rule, and the other omits to do so, or violates it, a collision is almost certain to follow" (*p*). At the same

(*k*) *The Wooda* (1915), 31 T. L. R. 222.

(*l*) *The Velocity*, *supra*; *The Esk and The Niord* (1871), L. R. 3 P. C. 436; *The Cologne and The Ranger* (1872), L. R. 4 P. C. 519. See also *The John Taylor*, 6 Bened. 227.

(*m*) *The Saragossa* (1892), 7 Asp. M. C. 289. Cf. *The Fancy*, (1917) P. 13.

(*n*) *The Highgate* (1890), 6 Asp. M. C. 512, *supra*, p. 389; *The New York*, 82 Fed. Rep. 819.

(*o*) *The Vivid* (1849), 7 Not. of Cas. 127; *The Immaganda Sara Clasina* (1850), 7 Not. of Cas. 582; *The Test*, 5 Not. of Cas. 276. The above passage from the beginning

of the paragraph was quoted from the last edition of this work and approved in *The Olympic* and *H.M.S. Hawke*, (1913) P. 214, at p. 245, C.A. In that case the assessors to the Court of Appeal advised that as a matter of good seamanship the *Hawke* should have kept clear of the *Olympic*, but the Court held that the rule applied, and the *Hawke* was right in keeping her course. See *ibid.* pp. 245 *seq.*, 249.

(*p*) *New York and Liverpool U. S. Mail Co. v. Rumball*, 21 How. 372, 384; *Belden v. Chase*, 150 U. S. Rep. 674; *The Britannia*, 46 Davis, 130.

Article 21.

time it must be observed that not every alteration of course and speed when ships are in sight of each other, is a breach of the rule, for the rules only apply when there is risk of collision (*q*). Thus where a steamer reduced her speed when another was three-quarters of a mile from her and could have found no real difficulty in avoiding her, it was held there was no breach of the rule (*r*).

But, like the other steering and sailing rules, Art. 21 is subject to the exception (Art. 27) of special circumstances. Thus, a ferry-boat just entering her dock in New York harbour is not required to keep her speed to the danger of herself and her passengers (*s*). A ship that was being overtaken stopped to allow a third ship to cross her bows, and then went ahead. She was held to be free from fault (*t*). But a patrol ship approaching another to stop her was held to blame for increasing her speed three minutes before the collision (*u*).

But subject to the exception of special circumstances.

A tug (*x*), with craft in tow, was being overtaken by another tug and tow. The former had to alter her course to avoid an approaching steamship, and before doing so, whistled and got an answering whistle from the steamship; both which whistles the overtaking tug might have heard. The overtaking tow collided with the tow ahead. The overtaking tug was held alone in fault.

It has been held by the Privy Council that "if a ship bound to keep her course undertakes to justify her departure from that rule, she takes upon herself the obligation of showing both that her departure was, at the time it took place, necessary in order to avoid immediate danger, and also that the course adopted by her was reasonably calculated to avoid that danger" (*y*); and the alteration must be no more than is necessary (*z*). There are decisions of the Supreme Court of the United States to the same effect (*a*).

(*q*) Generally as to when the rules apply, see *supra*, p. 304.

(*r*) *The Roanoke*, (1908) P. 231, 241, 245. Compare *The Norma* (1876), 3 Asp. M. C. 272; *The Banshee* (1887), 6 Asp. M. C. 221.

(*s*) *Walsh v. Brooklyn and New York Ferry Co.*, 68 Fed. Rep. 507.

(*t*) *The Mesaba*, 111 Fed. Rep. 215.

(*u*) *The Fancy*, (1917) P. 13.

(*x*) *The Whiteash and The Winnie*, 64 Fed. Rep. 893.

(*y*) *The Agra v. The Elizabeth Jenkins* (1866), L. R. 1 P. C. 501; and see the observations of Dr. Lushington in *The Test*, *ubi supra*.

(*z*) *The Saragossa* (1892), 7 Asp. M. C. 289.

(*a*) *The Scotia*, 14 Wall. 170; *The Potomac*, 8 Wall. 590.

Article 21.

This rule is perhaps the most difficult of all the regulations for seamen to adhere to. It must always be a matter of difficulty for the officer in charge of the vessel which has to keep her course and speed to determine when the time has arrived to take action, for if he acts too soon, he may disconcert any action which the other vessel may be about to take to avoid his vessel, and be blamed for so doing, and yet the time may come when he must take action. The precise point when he should cease to keep his course and speed is difficult to determine, and some latitude is allowed him in determining this (*b*), and when it is shown that he was carefully watching the other vessel and endeavouring to do his best to act at the right moment, he will not be held to blame, though, it afterwards appears that he waited too long or acted too soon (*c*). A vessel will not be held in fault for keeping her course and speed, though she could have avoided collision by an alteration of either, if the other vessel by her own action alone could also have avoided it (*d*). To stand on as long as it is possible to do so without immediate and manifest danger seems to be always justifiable. The same interpretation is placed on the Article in America, where it was said by a judge of the Supreme Court that a vessel "will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her . . . at least, in the absence of some distinct intimation that she is about to fail in her duty" (*e*).

In the case of a sailing ship, A., close-hauled on the port tack, approaching another, B., having the wind free on the starboard tack within the crossing rule, unless there are exceptional circumstances, and it is certain that B. will not keep out of the way, A. has no choice but to stand on (*f*).

How a ship
hove-to is to

Where the vessel required to keep her course is hove-to,

(*b*) *The Albano*, (1907) App. Cas. 193.

(*c*) *The Huntsman* (1911), 104 L. T. 464; *The Ranza* (1898), 79 L. J. (P.) 21, n.

(*d*) *The Olympic v. H.M.S. Hawke*, (1913) P. 214. Cf. *The Huntsman*, *ubi supra*; *Beucker v. Aberdeen Steam Trawling Co.* (1910), S. C. 655—Ct. of Sess.

(*e*) Cf. *The Ornen*, in Ct. App.,

23rd Jan. 1900; *The Delaware*, 54 Davis, 459; *The Britannia*, 46 Davis, 130; *The New York*, 82 Fed. Rep. 819.

(*f*) See *The Byfoged Christensen* and *The William Frederick* (1879), 4 App. Cas. 669; *The Illinois*, 13 Otto, 298; *The Highgate* (1890), 6 Asp. M. C. 512. See also *supra*, p. 371, for a "hard case."

it appears to be the duty of those on board to fill on her and get her under command without altering her course more than is necessary (*g*).

Article 21.

"keep her course";

A vessel hove-to with her helm lashed to leeward, forging ahead as she comes to and falls off, does not fulfil the requirements of Art. 21 (*h*).

A vessel close-hauled does not by luffing a little, and so that she does not lose her headway, break the rule requiring her to keep her course (*i*); nor, it is submitted, does she infringe Art. 21 by breaking off if the wind heads her (*k*). But a vessel which luffed to the extent of two and a-half points was held to have infringed the regulation (*l*). And it has been held that a vessel does not, by altering her course so as to give an overtaking ship more room to pass, infringe the rule (*m*). If a close-hauled ship departs from the rule requiring her to keep her course, as a general rule she should luff rather than bear up, as she thereby lessens her way, and, if a collision takes place, its effect is likely to be less disastrous (*n*).

and a ship by the wind.

The following cases illustrate the application of Art. 21:

Cases illustrating the application of Art. 21.

A sailing ship, with the wind aft, meeting a steamship nearly end on, was held in fault for porting (*o*). But a slight alteration in the helm of a sailing ship, when an approaching steamship was two miles distant, was held not to be an infringement of the rule requiring her to keep her course (*p*). And a steamship, with another a quarter of a mile astern on her port quarter, and overtaking her, was held not to be in fault for porting half a point (*q*).

A sailing ship must not go about close ahead of a steam-

(*g*) *The General Lee* (1869), 19 L. T. 750.

(*h*) *The Transit*, 3 Bened. 192; and see further, p. 372, above, as to the duty of a ship hove-to.

(*i*) *The Marmion* (1872), 1 Asp. M. C. 412; *The Aim* and *The Amelia* (1874), 2 Asp. M. C. 96; *The Great Eastern* (1865), 3 Moo. P. C. N. S. 31; *The Singapore* (1866), L. R. 1 P. C. 378.

(*k*) She would be in fault if she broke off more than necessary; as in *The Elizabeth Jones*, 5 Davis, 514.

(*l*) *The Earl Wemyss* (1889), 6

Asp. 364, 407.

(*m*) *The Franconia* (1877), 2 P. D. 11; but see *The Corsica*, 9 Wall. 630; *infra*, p. 398.

(*n*) *The Agra* and *The Elizabeth Jenkins* (1866), L. R. 1 P. C. 501; *The Great Eastern*, *ubi supra*.

(*o*) *The Bougainville* and *The James C. Stevenson* (1873), L. R. 5 P. C. 316.

(*p*) *The Norma* (1876), 3 Asp. M. C. 272; cf. *The Bangshee*, 6 *ibid.* 221; and *The Roanoke*, (1908) P. 231.

(*q*) *The Franconia* (1877), 2 P. D. 8.

Article 21.

ship, so as to embarrass the latter and make it difficult for her to keep out of her way (*r*). But a steamship, attempting to pass a sailing ship turning to windward in a narrow channel, must be prepared for the sailing ship going about, and the latter is under no obligation to give notice of her intention to go about (*s*).

It seems that where risk of collision exists, a sailing ship is not entitled to go about until compelled to. Then Art. 27 applies, and excuses her for not keeping her course. A three-masted schooner was standing in towards the Goodwin Sands on the port tack, heading W. by S. Approaching her was a steamship on a S.S.W. course, having the schooner about one point on her starboard bow, and under such circumstances that there was risk of collision. The schooner went about, and there was a collision. The question was, whether the schooner had infringed Art. 21. The opinion of the Trinity Masters was asked by Butt, J., in these terms:—Would there have been any risk to the schooner, having regard to the tide (running to the westward) and all the surrounding circumstances, if she had stood further in towards the sands? The answer to this question being in the affirmative, it was held that Art. 27 applied, and that the schooner had not infringed the regulations by going about (*t*).

In a Canadian case a sailing ship in tow with sail set was struck on the quarter by another vessel in tow of the same tug, and was forced against an overtaking steamship (*u*). She was held in fault for not keeping her course; *sed qu.* as to the reason of the decision.

A smack hove-to on the port tack, with her helm lashed, was heading so as to cross the course of a three-masted schooner close-hauled on the starboard tack. Neither vessel did anything until the collision was inevitable. The schooner, as well as the smack, was held in fault, because she did not bear up in time (*x*).

(*r*) *The Saucy Lass* v. *The Bolderaa* (1816), Holt, 205; *The Mary Ann*, 11 Fed. Rep. 336.

(*s*) *The Palatine* (1872), 1 Asp. M. C. 468. It is not quite clear in this case whether it was necessary for the sailing ship to go

about when she did.

(*t*) *The Orwell*, Ad. Div. 17th Dec. 1887.

(*u*) *The Farewell*, 8 Quebec L. R. 87.

(*x*) *The Rosalie* (1880), 5 P. D. 245.

Article 21.

American cases.

In America it is held to be the duty of a ship working to windward, in company with other ships, to "beat out her tack." If she goes about in a narrow channel before the shoaling of the water or other dangers of navigation require it, and thereby embarrasses another ship which would have cleared her if she had stood on, she was held to be in fault for the collision (*y*). In a case of collision between a sailing ship turning to windward and a steamship, the Circuit Court said: "What the law requires for a sailing vessel in a narrow channel is, to beat out her tack, and, having beat it out, to come about with all proper despatch upon the other, leaving to the steam vessel the responsibility of being in a position to enable her to do so without danger" (*z*). But this rule does not require a ship to be held in fault merely because she goes about before she is obliged to, provided she does not thereby embarrass the other ship (*a*).

In a case where it was proved that there was, at the time of the collision, a flat calm, it was held by the Supreme Court that the sailing ship, whose duty it was to keep her course, could not be in fault (*b*).

The rule requiring a vessel to keep her course is strictly enforced by the Courts in the United States. A sailing ship approaching a steamship, admitted that so soon as there was risk of collision she kept away two or three points. She was held to be in fault. The Court said (*c*): "A vessel whose duty it is to keep her course has no right to change it as soon as she apprehends a collision. In this case the duty of the tug to keep out of the way of the lighter arose only when the two vessels were proceeding in such directions as to involve risk of collision; and it was under the same circumstances that the duty arose on the part of the lighter to keep her course. Therefore, under the statute requiring the lighter to keep her course, her apprehension of a collision could not justify her in changing her course. Moreover, it is the

(*y*) *The Empire State*, 1 Bened. 57; *The Harrisburg*, 71 Fed. Rep. 894; *The Relief*, 63 Fed. Rep. 169; *The A. W. Thompson*, 39 Fed. Rep. 115; *The Clara Davidson*, 24 Fed. Rep. 763.

(*z*) *The Empire State*, *ubi supra*.

(*a*) *The Coe F. Young*, 49 Fed.

Rep. 167.

(*b*) *The Commerce*, 16 Wall. 33.

(*c*) *The General U. S. Grant*, 6 Bened. 465, 467; and see *The Adriatic*, 17 Otto, 512, as to the duty of a sailing ship to keep her course. See also *The Stephen Morgan*, 4 Otto, 599.

Article 21.

actual risk or danger of collision that determines the duty of both vessels, and not the apprehension merely. The rule was made and is administered for the very purpose of preventing the vessel charged with the duty of avoiding the other from being embarrassed by a change of course on the part of the other into danger, on the apprehension that such duty of avoidance will not be fulfilled."

A schooner seeing the mast-head light of a steamship, and mistaking it for a light ashore, hove-to to get a cast of the lead, thereby presenting her red light to the steamship. The steamship ported. The schooner, on discovering her mistake, got under way, and crossed the course of the steamship, showing her green light. It was held that the schooner was solely in fault for not keeping her course (*d*).

The danger of departing from Art. 21 is illustrated by an American case, where a vessel, A., starboarded in order to assist another, B., whose duty it was to keep out of her way, in an attempt to cross her bows. Finding that she could not cross A.'s bows, B., at the last moment, stopped. In consequence of B.'s stopping and A.'s starboarding, a collision occurred. A. was held to be solely in fault (*e*).

On the other hand, a sailing ship has been held in fault for bringing about a collision between herself and a steamship by premature action (*f*).

A dredger at work in New York harbour, driving with the tide about one knot an hour over the ground, in fear of a steamship which was shaping to pass between her and another dredger at very close quarters, got up her gear and steamed ahead, thereby making it impossible for the steamship to avoid her. She was held alone in fault (*g*). It was proved that ocean steamships often passed such craft within a few feet.

A steamship crossing another on her starboard side gave two blasts with her whistle and got a two-blast answer back. She starboarded her helm and slowed her engines.

(*d*) *The Virgo*, 7 Bened. 495.

(*e*) *The Corsica*, 9 Wall. 630.

(*f*) *The Kirkwall* (1909), 11 Asp.

M. C. 173; but see *The Energia*, 56 Fed. Rep. 124.

(*g*) *The Norge*, 55 Fed. Rep. 347.

She was held in fault for causing the collision by slowing her engines (*h*). Article 21.

ARTICLE 22.

Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. Article 22.

This Article is identical with Art. 22 of the Regulations of 1897, when the sanction of an express regulation was first given to a well recognised rule of seamanship. To cross another ship's bow unnecessarily, where collision is probable or even possible, is an unseamanlike manœuvre, and apart from the regulations would be held to be negligent in fact and in law. The insertion of the Article is probably due to the fact that under former regulations a ship, whose duty it was to keep out of the way, was not, in the Courts, held to be in fault, merely because she attempted to cross the bows of the ship with which she came into collision (*i*). Expressions were used in these cases, which were capable of being misunderstood by seamen, as meaning that a ship had as much right to cross the bows of another as to go under her stern, and it was thought necessary to put the matter beyond doubt (*k*).

To comply with this Article a steam vessel should port to a red light on her starboard bow. She may, however, stop without porting and wait until the other vessel has passed (*l*). If local conditions render porting dangerous, she could run away under hard-a-starboard helm, although that is not as advisable a course as stopping and waiting (*m*). For sailing ships working to windward the rule is now clear, that the ship on the port tack must bear away and not luff, unless the circumstances are such that to bear away is impossible or certain to cause collision.

(*h*) *The Nutmeg State*, 62 Fed. Rep. 847.

(*i*) See *The Nor* (1874), 2 Asp. M. C. 254; *The Carrol*, 8 Wall. 302; *The Great Eastern* (1885), 3 Moo. P. C. N. S. 31.

(*k*) "Give way" in the *Trinity*

House rule of 1840 meant "go astern of." See *The Rose*, 2 W. Rob. 1.

(*l*) *The Ashton*, (1905) P. 21, 31, quoting *The Rules of the Road at Sea*, by H. Stuart Moore.

(*m*) *The Ashton*, *ubi supra*.

Article 23.

ARTICLE 23.

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

This Article is identical with Art. 23 of the Regulations of 1897, and corresponds with Art. 16 of 1863 and Art. 18 of 1884, but the wording and effect of it are different.

In 1863, when a rule on the subject was first made, it was combined with the "moderate speed in fog" rule, and was as follows:—

Art. 16 of
1863.

"Every steamship, when approaching another ship so as to involve risk of collision, shall slacken speed or, if necessary, stop and reverse, and every steamship shall, when in a fog, go at a moderate speed."

Under this rule both ships had to slacken speed in every case where the Article was applicable. In 1880 the rule as to speed in a fog was put into a separate Article (No. 13, now No. 16), and "if necessary" put at the end of the Article, for the purpose, apparently, of making the words apply to "slacken speed." It was, however, held that slackening speed by both vessels was still imperative, when there was risk of collision⁽ⁿ⁾. The Article then ran as follows:—"Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary."

Art. 18 of
1880 and
1884.

Alterations
in 1897.

In 1884 the Article was unaltered, and in 1897 was changed to its present form. The alterations made are (1) that the obligation no longer applies to all steamships approaching another ship with risk of collision, but is confined to steam vessels directed by Articles 19, 20 and 24 to keep out of the way of another vessel when approaching her, and is not imposed on vessels directed to keep course and speed by Arts. 19, 20 and 24, nor to vessels meeting end on or nearly end on, and directed each to alter course to starboard by Art. 18; (2) that the obligation to slacken speed is qualified by the words "if necessary"; and (3) that the

(n) *The Ceto* (1889), 14 App. Cas. 670, 684.

obligation to stop and reverse is to some extent modified by the change in the wording to "stop *or* reverse." Article 23.

Apart from the regulations, it would be negligence in a steamship which failed to slacken her speed, or to stop or reverse, if such a manœuvre were "necessary" to avoid collision (*o*); and Art. 23 appears to be little more than a declaration of the law in this respect (*p*). But in this, as in the other cases provided for by the regulations, the statutory effect of not complying with the Article must not be overlooked. It is clear that the present Article does not require a ship to stop and reverse in every case where there is risk of collision, but only where it is "necessary." The necessity which the Article speaks of is the necessity of avoiding risk of collision (*q*). "Necessary" does not mean that the situation is such that without stopping and reversing a collision would take place; it means, rather, prudent or expedient (*r*). Necessity exists, if "the circumstances are such as to convey to the mind of a skilled seaman that risk of collision is so imminent as to make it indispensable to stop and reverse" (*s*). "If necessary."

A steamship in a fog so dense that a vessel could not be seen her own distance off, hearing the whistle of another continually approaching, was held in fault for not reversing until the other vessel was seen (*t*). But the decisions cited below show that the direction to "reverse if necessary" is not confined to cases of imminent danger such as this.

In America it has been held that the duty to stop and reverse does not arise until it becomes clear that the other ship, whose duty it is to alter her course, does not intend to do so (*u*). The precise effect of the "stop and reverse" rule does not appear to have been so fully considered in the American as in the English cases.

(*o*) See *The Birkenhead* (1849), 3 W. Rob. 75; *The James Watt* (1845), 2 W. Rob. 270; *The Vivid*, 7 Not. of Cas. 127.

(*p*) See *per* Lord Halsbury, C., in *The Ceto* (1889), 14 App. Cas. 670, 673; *per* Lord Bramwell, *ibid.* p. 689.

(*q*) *Per* Lord Watson, *The Ceto* (1889), 14 App. Cas. 670, 684.

(*r*) *Per* Lord Bramwell (1889), 14 App. Cas. 689.

(*s*) *Per* Lord Fitzgerald, *ibid.* p. 690; and see *per* Lord Herschell, *ibid.* p. 694.

(*t*) *The Dordogne* (1885), 10 P. D. 6.

(*u*) *The John King*, 49 Fed. Rep. 469.

Article 23.

In *The Ceto* (*x*), Lord Fitzgerald seems to have been of opinion that, where risk of collision exists, for a ship without necessity to stop and reverse so as to bring herself to a standstill is negligence (*y*). It is submitted that no such general rule can be laid down, though under certain circumstances the manœuvre may be wrong.

The necessity
must be
apparent.

In *The Beryl* (*z*), Bowen and Fry, L.JJ., questioned whether the words "if necessary" mean "if it is actually necessary," or, "if the officer in charge should reasonably think that a necessity has arisen." In *The Ceto* (*a*), it was held that the latter interpretation is the correct one.

"The necessity must not be such as to become manifest only when all the facts are ascertained. It must be such as would be apparent to a seaman of ordinary skill and prudence with the knowledge which he possesses at the time" (*b*). Lord Esher had previously expressed the same opinion: "When you speak of rules that are to regulate the conduct of people, those rules can only apply to circumstances which must or ought to be known to the people at the time. You cannot regulate the conduct of people as to unknown circumstances" (*c*).

In what
waters it
applies.

Like the rest of the regulations, Art. 23 probably applies in rivers, harbours, and other tidal waters, as well as at sea (*d*). The corresponding Article of the Regulations of 1884 was held to apply in the Clyde, where local rules are in force (*e*).

Scope of the
article.

In consequence of the decision of the House of Lords in *The Khedive* (*f*), it is of the highest importance that the construction and application of Art. 23 should be properly understood; for though the presumption of fault consequent on a breach of the regulations has been repealed by the Mari-

(*x*) (1889), 14 App. Cas. 670.

(*y*) (1889), 14 App. Cas. 670, 693.

(*z*) (1884), 9 P. D. 137, 144.

(*a*) (1889), 14 App. Cas. 670; followed in *The Knarwater* (1894), 63 L. J. Ad. 65; and distinguished in *The Lord Bangor*, *supra*, p. 194.

(*b*) *Per* Lord Herschell at p. 694. See also dicta of Lord Watson at p. 686.

(*c*) *The Beryl* (1884), 9 P. D. 137, 138. These words were quoted

with approval by Lord Herschell in *The Theodore H. Rand* (1886), 12 App. Cas. 250; and by Lord Fitzgerald in *The Ceto* (1889), 14 App. Cas. 670, 691. See also *The Dordogne* (1885), 10 P. D. 6.

(*d*) See *supra*, p. 299.

(*e*) *Little v. Burns, The Owl and The Ariadne* (1881), 9 Ct. of Sess. Cas. 4th ser. 118.

(*f*) (1879), 5 App. Cas. 876; see below, p. 405.

time Conventions Act, 1911, the obligation to obey them remains (g). Like the other steering and sailing rules, Art. 23 must be read in conjunction with Art. 27; but although that Article has been held to justify a steamship in not stopping and reversing where going ahead is the one only chance of avoiding collision, the officer who elects not to stop and reverse his engines, where there is risk of collision, takes upon himself a heavy responsibility. The requirements of the law in this matter can only be appreciated by a careful examination of the cases. Article 23.

It was held by the Privy Council that the corresponding Article (Art. 16) of the Regulations of 1863 applied only "when there is a continuous approaching of the two ships;" that the "stop and reverse" and "crossing" rules were to be read together; that, so reading them, it was evident that the duty to slacken or stop and reverse did not necessarily arise at the moment at which the "crossing" rule became applicable; and that if two ships, approaching each other under circumstances such that the "meeting" rule is applicable, port their helms so that there is no longer risk of collision, there is no duty on either ship to slacken, or to stop and reverse (h). *The Jesmond*
and *The Earl*
of *Elgin*.

This seems to be the effect of the decision in *The Jesmond* and *The Earl of Elgin*. The facts in that case were as follows:—*The Jesmond* was a screw steamship of 589 tons register, in water ballast. *The Earl of Elgin* was a screw steamship of 608 tons register, with a cargo of coals on board. Each ship sighted the other in the open sea at a distance of a mile and a half. They were approaching each other at a joint speed of eight or nine miles an hour, on courses nearly opposite, and nearly end on. *The Jesmond* put her helm to port and brought red to red. She did not slacken her speed, or stop or reverse her engines. It was contended that she ought at the moment when she ported to have slackened her speed. It was held by the Privy Council that, having ported and brought red to red, the original risk

(g) See *supra*, Chap. II. 313; *The Baltimore*, 34 Fed. Rep. 660. The present Article does not, however, apply to "meeting" ships as did Art. 16 of 1863.
(h) *The Jesmond* and *The Earl of Elgin* (1872), L. R. 4 P. C. 1; and see *The Milwaukee*, Brown Ad.

40
Article 23.

of collision was determined, and that she was under no obligation then or afterwards to slacken her speed. This case was followed by the Privy Council in *The Rhondda* (i).

The Rhondda.

The circumstances of that case were as follows:—The steamship *Rhondda* rounding Faro Point from the westward, to enter the Straits of Messina, saw the mast-head and red lights of *The Alsace Lorraine* on her starboard bow, distant about a mile. Her helm was put hard-a-port. No order was given to the engines, which were going full speed ahead. The vessels were approaching each other at a combined rate of fifteen miles an hour. Owing to a current, or eddy tide, taking the ship on her starboard bow, she did not properly answer her helm. As soon as this was perceived her engines were stopped and reversed. It was held by the Privy Council that *The Rhondda* was not in fault by the rule laid down in *The Khedive* (k), for not stopping and reversing, when the other ship was first seen. If *The Rhondda* had answered her port helm, the risk of collision would have been determined, and she was under no obligation to slacken her speed or to stop and reverse. It was only when the failure of her port helm manœuvre became apparent that the duty to stop and reverse arose. She did then stop and reverse, and was therefore free from blame. In the words of Lord Watson in *The Khedive*, it was a case where the “crossing” rule “could not reasonably be held to apply before the moment at which it was actually obeyed” (l).

There is some difficulty in reconciling *The Beryl*, decided by the Court of Appeal, with the decisions in *The Jesmond* and *The Rhondda*. In *The Jesmond* it was held that the “meeting” and “stop and reverse” rules were to be read together; in *The Beryl*, Brett, M. R., held that the corresponding Regulations of 1880 (Arts. 16 and 22) were wholly independent of the “stop and reverse” rule (Art. 18), which, he said, “does not in any way modify, clash with, or require to be construed at the same time as, the other rules,” but is a wholly independent rule. It applies, like the other rules, at the moment before risk of collision exists, when the

(i) (1883), 8 App. Cas. 549.
 (k) (1880), 5 App. Cas. 876.

(l) 1880, 5 App. Cas. 902.

Article 23.

position and action of two steamships is such as to involve risk of collision. "It must apply if the circumstances are such that an officer of ordinary skill and care would be bound to come to the conclusion that, if the ships continue to approach each other, there will be risk of collision" (m). It does not appear that either *The Jesmond* or *The Rhondda* was cited in *The Beryl*; and it may be doubted whether the interpretation placed upon the "stop and reverse" rule in *The Jesmond* is not preferable to that adopted in *The Beryl*. The latter case has, however, been followed in the Court of Appeal and House of Lords (n), but in view of the alterations to the rule made in 1897, the earlier interpretation may well be adopted, if the question comes up again for consideration.

The distinction between *The Jesmond* and *The Khedive*, subsequently decided by the House of Lords, should be noted. The facts in *The Khedive* were as follows:—*The Khedive* and *The Voorwaarts* were two ocean steamships of 3,740 and 3,000 tons register respectively. They were proceeding off the coast of Penang at full speed upon nearly parallel and opposite courses, each having the other on her starboard bow, green light to green light. When they were from half to three-quarters of a mile apart *The Voorwaarts* suddenly ported, showing her red to *The Khedive*, and thereby caused risk of collision. The helm of *The Khedive* was put hard-a-starboard. This was held to be a right manœuvre. At the same time the order was given to stand by her engines; a minute and a-half afterwards the engines were stopped and reversed; one and a-half minutes after this the collision occurred. By not slackening her speed or stopping and reversing when the red light of *The Voorwaarts* came into view *The Khedive* infringed the crossing rule. The House of Lords held her in fault by reason of the presumption arising from her breach of a regulation (o). The Court of Appeal had gone into the question whether, having regard to the suddenness of the peril caused by *The Voorwaarts'* change

*The Voor-
waarts and
The Khedive.*

(m) *Per Brett, M. R.*, 9 P. D. M. C. 488.
141.
(n) *The Dordogne* (1884), 10 P. D. 6; *The Memnon*, 6 Asp. (o) Under the Merchant Shipping Act, 1873 (36 & 37 Viet. c. 85), s. 17.

Article 23. of course, the captain of *The Khedive* had shown want of proper care, skill or nerve in not giving the absolutely right order to the engines for a minute and a-half after *The Voorwaarts'* red light came into view; the House of Lords held that, having deliberately elected to keep his engines going ahead full speed, and not to stop and reverse, he had infringed the regulations, and was therefore to be deemed in fault under the statute (*p*).

The Benares. There is difficulty in reconciling the decision in *The Benares* (*q*), a case subsequently decided by the Court of Appeal, with some of the *dicta* of the learned lords who addressed the House in *The Khedive*, and even with the principle upon which the decision in the latter case appears to be founded. But *The Khedive* was before the Court of Appeal in *The Benares*, and the intention of the Court was to decide nothing contrary to *The Khedive*. That case was distinguished as depending upon special and different circumstances. The circumstances differed in this: that in *The Khedive* the not stopping and reversing was wrong, as matter of seamanship, and probably contributed to the collision (see 5 App. Cas. 898, 899); whereas in *The Benares* the departure from the regulations was "the one chance still left of avoiding danger which was otherwise inevitable." The manœuvre adopted—keeping on at full speed—though unsuccessful, was held to be "necessary," and therefore in accordance with Art. 23 of the Regulations of 1884.

At first sight *The Khedive* seems to decide that a steamship will always be held in fault if, having an opportunity to stop and reverse, and not being compelled to keep on by danger other than that of collision, she does not stop and reverse before the collision occurs. But although there are *dicta* in that case pointing to such a conclusion, the decision as applied to the facts of the case does not go so far. If the circumstances are such that departure from the "stop and reverse" rule was necessary within the meaning of the regulations, a ship will not be held to be in fault though she does not stop or reverse before the collision. Such circumstances

(*p*) (1880), 5 App. Cas. 876. *Saragossa* (1892), 7 Asp. M. C.
 (*q*) (1884), 9 P. D. 16. *The* 289, seems a similar case.

existed in *The Benares*. A steamship, *The Gerarda*, going seven knots, saw a green light a point on her port bow distant about three-quarters of a mile. Her helm was put to starboard, and very shortly afterwards *The Benares* was seen with her port side open and showing no red light. The helm of *The Gerarda* was put hard-a-starboard and the engines kept on full speed. *The Benares* struck *The Gerarda* on her starboard side. It was found that the first starboarding of *The Gerarda* was not wrong, and that after seeing *The Benares*' port side the only chance of escaping collision was for *The Gerarda* to hard-a-starboard and keep on at full speed, as she did. It seems, therefore, that not to stop and reverse when a collision is in fact inevitable, but in the reasonable opinion of the person in charge may possibly be avoided by keeping on full speed, is not an unnecessary departure from the regulations.

In the case of *The Memnon* (r), that vessel was held to blame for a collision with *The San Salvador*. They were steamships crossing nearly at right angles. *The San Salvador*, though she had *The Memnon* on her own starboard bow, took no step to avoid collision until she was within three ships' lengths of her, when she starboarded. The course and speed of *The Memnon* were such that, had *The San Salvador* kept her course, *The Memnon* would have passed ahead of her without collision, and *The Memnon* stopped her engines as soon as *The San Salvador* starboarded. It was held that *The Memnon*, as well as *The San Salvador*, was to blame; that those on board her were not justified under the circumstances in assuming that *The San Salvador* would do what was right; that they ought to have seen that the courses of the two vessels involved risk of collision, and accordingly that they ought to have slackened her speed or stopped and reversed earlier. Under the present regulations *The Memnon* would, it seems, have been free from blame.

A steamship, A., by porting to another, B., that was approaching her with all her lights showing, shut in the green light of B.; but B. by perverse starboarding brought

(r) (1889), 6 Asp. M. C. 317, 488. As to assuming that the other vessel will do the right thing, dist. *Wilson v. Currie*, (1894) App. Cas. 116.

The Arratoon
Apcar.

Article 23. her green again into view; thereupon A. again ported and shut in B.'s green; B., continuing to starboard, again brought her green into view, and a collision followed. It was held, under the Act of 1873, that A. was in fault for not having stopped and reversed before the collision (s).

The Stanmore. In *The Stanmore* the duty to stop and reverse, and not to stop only, was insisted upon. There the alteration of the other ship's course at the distance of a quarter of a mile was indicated by the apparent closing of the masthead and side light (t).

The Thames
and *The*
Lutetia.

In *The Thames* and *The Lutetia* a vessel was held in fault for not having stopped and reversed "when the risk of collision must have been apparent" (u).

So, in America, where two steamships, *The C.* and *The M.*, were approaching one another on nearly parallel opposite, but slightly converging lines, and in a position to pass clear, *The C.* ported and ran across *The M.*, rendering collision imminent, and *The M.* did not slacken, signal, or reverse till after the porting of *The C.* It was held that *The M.* as well as *The C.* was to blame, the Court saying that there was such uncertainty in the movements of *The C.* as called for the closest watch and the highest diligence (x).

The Libra.

A., a steamship rounding Tilbury Ness in the Thames, under a port helm, was approaching another, B., on the other side of the point in such a position that, if she had not been under a port helm, there would have been risk of collision; it was held by Brett, L. J., that it was not the duty of A. to stop and reverse under one of the Thames Rules, which is very similar in terms to Art. 23 (y).

Application
of Art. 23 in
a fog.

In *The Ebor* (z) Lord Esher said that Art. 18 cannot be broken without at the same time breaking Art. 13 of the Regulations of 1884. This cannot be said of the corresponding Articles (Art. 16 and Art. 23) of the existing regulations, by reason both of the additional paragraph now

(s) *The Arratoon Apar* (1889), 15 App. Cas. 37.

(t) *The Stanmore* (1885), 10 P. D. 134. As to the closing of the lights indicating a change of course, see above, p. 367.

(u) *The Thames* and *The Lutetia*

(1884), 9 App. Cas. 640, 651. Cp. *The Nord Kap* and *The Sandhill*, (1894) App. Cas. 646.

(x) *The Manitoba*, 15 Davis, U. S. 97.

(y) (1881), 6 P. D. 139.

(z) (1886), 11 P. D. 25.

contained in Art. 16 and also of the limitation of the duty to stop and reverse to the vessel which is directed to keep out of the way. It may be observed, however, that a vessel, hearing a fog signal apparently forward of her beam, the position of which is not ascertained, does not in all circumstances fulfil her duty by complying with Art. 16 alone. Thus a steamship was held in fault for not reversing as well as stopping on hearing a single blast of a fog-horn apparently on the port bow, since it was considered that those in charge of her should have realised, having regard to the wind, that a sailing ship was likely to cross ahead of them on the starboard tack (*a*). This rule, however, will, it seems, only apply to cases in which the indications of the position and probable course of the vessel, in respect of which the Rules would in clear weather require some course to be taken, are reasonably clear, and where they were not so reasonably clear a steamship was held in fault for keeping her course and speed under the crossing rule (*b*).

Under former regulations there are many decisions as to the duty of a steamship in a fog, hearing the whistle of another which she cannot see. The question will arise, how far are these decisions applicable under the existing Art. 23? It has been already pointed out that the corresponding Article of former regulations (cf. Art. 18 of 1884) applied to both ships; the present Art. 23 applies only to the ship "which is directed by these rules to keep out of the way." It has been held that the obligation to reverse does not arise until the circumstances are known and the necessity is apparent (*c*); and the reasoning upon which these decisions were founded is applicable to the existing Art. 23. It would seem, therefore, that under the present law the duty to reverse does not arise (*d*) until the ships are in sight of each other, or until the course of the ship, whose duty it is to keep her course, is clearly indicated to the other by the different directions in which her whistle is heard.

(*a*) *The Merthyr* (1898), 8 Asp. M. C. 475.

(*b*) *The Cathay* (1900), 9 Asp. M. C. 35. See also *Crawford and Another v. Granite City S.S. Co.* (1906), Sc. L. Rep. xliii. 732.

(*c*) *Supra*, pp. 14, 61; and *infra*, p. 410.

(*d*) Except, possibly, in the case of a steamship hearing the fog-horn of a sailing-ship close to her and forward.

Article 23.

In view of the present Art. 16 and decisions thereon, it is unnecessary to do more than summarise the result of the numerous decisions on the application of the "stop and reverse" rule of former regulations to a steamship hearing the fog-horn or whistle of another ship in a fog.

According to these older cases, a steamship in a fog, hearing the whistle of another steamship approaching, was bound to bring herself to a standstill, at the latest when the ships were within hailing distance, though she was not bound to stop and reverse her engines as soon as she heard the whistle of another (*e*). Where two steamships were approaching each other with the risk of collision, and one of them, by altering her course, determined the risk, the regulations did not require her to stop or reverse (*f*); but if the risk was not in fact determined, although the course might have been altered, then it became incumbent upon her to stop and reverse (*g*). Where an omission to stop and reverse might by possibility have contributed to the collision, then the guilty of such omission was in fault, though those on board showed no want of ordinary skill, care, or nerve (*h*). On the other hand, failure to stop and reverse was not deemed a fault unless the officer knew, or ought to have known, that the regulation in question was applicable (*i*). Where to keep going ahead was the one and only chance of escaping collision, a circumstance was considered to exist which justified the not stopping and reversing (*k*). A vessel was liable to be held at fault where, although she slackened her speed, she did not stop and reverse until collision was inevitable, if she had had an

(*e*) *The Frankland* and *The Kestrel* (1872), L. R. 4 P. C. 529; *The Jesmond* and *The Earl of Elgin* (1872), L. R. 4 P. C. 1; *The Love Bird* (1881), 6 P. D. 80; *The Dordogne* (1884), 10 P. D. 6; *The Kirby Hall* (1883), 8 P. D. 71; *The Ceto* (1889), 14 App. Cas. 670, 695; *The Ebor* (1886), 11 P. D. 25; *The Harton* (1884), 9 P. D. 44.

(*f*) *The Jesmond*, *supra*.

(*g*) *The Ceto*, *supra*; see also *The John M'Intyre* (1884), 9 P. D. 135, 139; *The Martello*, 46 Davis, 64; *Fabre v. Cumar S.S. Co.*, 53

Fed. Rep. 288; *The Britannic*, 39 Fed. Rep. 395; *Donnell v. Boston Towboat Co.*, 89 Fed. Rep. 757; *The City of Atlanta*, 26 Fed. Rep. 456.

(*h*) *The Khedive* (1880), 5 App. Cas. 876.

(*i*) *The Khedive*, *supra*; *The Beryl* (1884), 9 P. D. 4; *The Ceto*, *supra*; *The Theodore H. Rand* (1886), 12 App. Cas. 247; *The Memnon* (1890), 6 Asp. M. C. 488; *The Emmy Haase* (1884), 9 P. D. 81.

(*k*) *The Rosetta* (1888), 6 Asp. M. C. 310.

opportunity of doing so (*l*). It was considered the proper course for a vessel hearing the fog signal of another forward of her beam, the position of which was not ascertained, to stop and proceed with caution, although not enjoined to do so by the rules (*m*).

Article 23.

Art. 23 does not require a steamship to slacken and reverse at the very moment when danger arises. "A man must have time to consider whether he should reverse or not. The Court is not bound to hold that a man should exercise his judgment instantaneously. A short, but a very short, time must be allowed him for this purpose" (*n*). But it is, of course, not an excuse for non-compliance with Art. 23 that the time which elapsed between the risk of collision becoming apparent and the collision was so short that the engines could not reasonably have been stopped and reversed, if the shortness of the time was due to want of a proper look-out. Thus, where it was proved that more than half-a-minute must have elapsed from the red light of an approaching steamship, A., coming into view on the starboard bow of the other, B., had a good look-out been kept on board B., B. was held in fault for not having reversed before the collision. If the red light had, in fact, been visible for only half-a-minute before the collision, it seems that the vessel would not have been held in fault for not stopping and reversing in so short a time (*o*).

Art. 23 is not infringed unless there is an opportunity of obeying it.

It appears that neglect to obey Art. 23 will cause a ship to be held in fault, if the omission, though it could not have contributed to the collision, might have caused or contributed to the damage (*p*). And in *The Voorwaarts* and *The Khedive*, Lord Watson said that the rule (Art. 16 of the Regulations of 1863) was enacted "with a view to obviate the risk and minimize the results" of a collision (*q*).

Object of Art. 23 is to minimize damage as well as to prevent collision.

A paddle-wheel steam trawler, going through the water (*r*)

Compliance with Article

(*l*) *The Ceto*, *supra*; *The Beryl*, *supra*.

(*m*) *The Rosetta* (1888), 6 Asp. M. C. 310.

(*n*) *Per Butt*; J., *The Emmy Haase* (1884), 9 P. D. 81; followed in *The Ngapoota*, (1897) App. Cas. 391; see also *Windham and Others v. Robertson* (1905), Sc. Law Rep. xlii. 602; and see *per Brett*, M. R., *The Beryl*, 9 P. D. 137, 138; *The Hubbuck*, Ad.

Div. 28th June, 1887.

(*o*) *The Emmy Haase*, *supra*.

(*p*) *The Thames* and *The Lutetia* (1884), 9 App. Cas. 640, 649, 652. Cf. *The Kaiser Wilhelm II.* (1915), 85 L. J. (P.) 26, excessive speed in a fog increasing the damage.

(*q*) (1880), 5 App. Cas. 903, 904.

(*r*) *The Tweedsdale* (1889), 14 P. D. 164. That she was going through the water is clear from the facts.

Article 23.

by trawler
at work.

one or one-and-a-half knots with her trawl down, saw a sailing ship approaching her with both her side lights open for ten or twelve minutes. She stopped without reversing her engines as soon as danger became imminent. It was assumed by Butt, J., that the "stop and reverse" rule applied to her (*s*), and he held that she had complied with it.

Though Art. 23 does not apply to sailing ships, it has been said that a sailing ship in a fog, or under circumstances similar to those in which Art. 23 applies, is under a corresponding obligation to shorten sail and reduce her speed as much as possible (*t*).

The burden is
upon a vessel
that does not
obey Art. 23
to show why
she did not
do so.

Where a steamship that is required by the regulations to keep out of the way has been in collision, and it is proved or admitted that she did not before the collision stop or reverse, it seems that the burden is on her to show why she did not comply with Art. 23. This burden she may discharge by showing that she was unable, or had not the opportunity, to stop and reverse (*u*), or that the omission to do so was the only chance of escaping collision (*x*).

In America, it has been held by the Supreme Court that the rule requiring a steamship to slacken does not apply where, if both ships continue their courses, they will pass clear, although, if either deviates from her course, there will be risk of collision (*y*).

Overtaken
steamship.

A steamship being overtaken by another vessel is not "approaching" the overtaking ship within the meaning of Art. 23. Her duty, therefore, is to keep her course and speed under Art. 21, and not to slacken under Art. 23, for that Article does not apply to her (*z*).

Engines not
to be set on
ahead until
risk is over.

To comply with Art. 23, a vessel must not only slacken or stop, but she must not set her engines ahead again until the risk of collision is past (*a*).

(*s*) At least as regards stopping. As to reversing, probably she could not with safety, because of her trawl warp.

(*t*) See *per* Brett, M. R., *The Dordogne* (1885), 10 P. D. 6, 12, and see *supra*, p. 363.

(*u*) See *The Khedive* (1880), 5 App. Cas. 876, 902.

(*x*) *The Benares* (1884), 9 P. D. 16.

(*y*) *The Free State*, 1 Otto, 200; Brown, Adm. 251. See, however, *The Manitoba*, 15 Davis, 97.

(*z*) *The Francoonia* (1877), 2 P. D. 8.

(*a*) In *Dowell v. General Steam Navigation Co.* (1856), 5 Ell. & B. 195, under the old law, it was held that a ship was in fault if she did not continue to exhibit a light so long as danger of collision existed.

If a steamship sights another, and cannot make out what course she is upon, it is her duty at once to slacken until she can ascertain what the stranger's course is, so that she may be able to take the measures required by the regulations (b); and she must do so before altering her helm, or taking any decisive step; for if she does not, and by altering her helm without knowing the other ship's position and course, causes a collision, she will be held to be in fault (c).

Article 23.

Duty to stop or ease the engines where the other ship's lights or course cannot be made out.

Apart from the regulations, where there is probable danger in clearing other craft, it is negligent for a steamship to approach them, without slackening, at a high rate of speed. In America it has been held by the Supreme Court that a large steamer approaching a tug with a number of barges in tow, and surrounded by other vessels, was bound to slacken, and not "hurl herself like a projectile in the midst of them" at the rate of seventeen miles an hour, taking the chance of clearing them (d). And in another case it was held by the same Court that a large steamer entering a harbour or narrow channel was bound to go at such speed as is consistent with the safety of other vessels (e).

Speed of a steamship approaching other craft.

A steamship in the North Sea on a clear night, going eight or nine knots over trawling ground, and running into a smack which showed no light astern, was held not to be in fault for going too fast (f). In an early case (g), it was held that, on a dark night in the Bristol Channel, ten knots was an improper speed for a steamship.

In applying Art. 23 it must be borne in mind that reversing the propeller, whilst the ship has headway through the water, always diminishes the turning power of the helm. In the case, therefore, of a screw steamship stopping and reversing her engines it is not always a necessary, or even a prudent, step for her to take when at close quarters with another ship. On the other hand, the common excuse that

Stopping and reversing not always a prudent measure.

(b) *The Rona* and *The Ava* (1874), 2 Asp. M. C. 182; *The General Lee* (1869), 19 L. T. 750.

(c) *The Bougainville* and *The Jas. C. Stevenson* (1874), L. R. 5 P. C. 316. As to ships in a fog, see *The Frankland* (1873), L. R. 4 P. C. 529; *The Kirby Hall* (1883), 8 P. D. 71.

(d) *The Syracuse*, 9 Wall. 672; followed in *The Lucy*, 74 Fed. Rep. 572.

(e) *The City of Paris*, 9 Wall. 634; and see *The Corsica*, 9 Wall. 630.

(f) *The Pacific* (1884), 9 P. D. 124.

(g) *The Rose* (1844), 2 W. Rob. 1.

Article 23.

Effect of
reversed
screw whilst
the ship has
headway.

the engines were not stopped and reversed because of the deadening effect of the reversed propeller upon the port helm is viewed by the Court with suspicion (*h*).

It may be convenient here to state shortly the effect, under ordinary circumstances, of reversing the propeller, whilst the ship has headway through the water, an effect which must always be taken into consideration in determining the application of Art. 23. The behaviour of a steamship under these circumstances was not so generally known in the year 1862, when the "stop and reverse" rule was framed, as it is at the present day. The propeller exerts considerable turning power on the ship, whether going ahead or astern, but more particularly when going astern (*i*). The effect is most strongly marked when the propeller is going astern and the ship has headway through the water, the circumstances under which Art. 23 is usually applicable. The turning effect is in the one direction or the other, according as the screw is right or left-handed. A right-handed screw revolves, when the engines are going ahead, viewed from astern, from left to right; a left-handed screw from right to left. When the screw is not deeply immersed, and froths air into water, it exerts, when reversed, considerable power to turn the ship's head independently of the rudder, the ship turning to starboard or port, almost irrespective of the helm (*k*), according as the screw is right or left-handed. This effect is produced even whilst the ship has headway through the water; it increases as the ship's way is stopped. It sometimes nearly disappears when the screw is so deeply immersed that it does not churn air into water (*l*). Under the same circumstances—that is to say, whilst the ship has headway through the water, and the engines and screw are working astern—the action of the rudder is the reverse of that which it has whilst the engines and screw are going ahead. This reverse action of the rudder is always feeble, and is different for different

(*h*) As in *The Arratoon Apar* (1889), 15 App. Cas. 37.

(*i*) This seems to depend upon the fact that the lower blades of the propeller being more immersed have a greater turning power than the upper.

(*k*) See an account of experi-

ments with *The Tabor*, Nautical Mag. 1880, p. 323.

(*l*) This is not the case with all ships. The writer has seen a loaded steamship backed out from alongside a wharf and turned at right angles to it almost entirely by the action of her reversed propeller.

ships, and even for the same ship under different conditions of loading. When there is wind sufficient to heel the ship, the advancing end of the ship, whether head or stern, will always seek, or fly up into, the wind.

The combined influences of (1) the reversed screw, (2) the wind, and (3) the rudder, severally acting in the manner above described, determine the course of the ship until her way is stopped. Their utmost effect, when all acting in the same direction (*e.g.*, screw, right-handed; helm, starboard; wind, on the starboard side), is small compared with the influence which the rudder exerts when the ship and engines are going full speed ahead. A circle of at least double the radius of that in which the ship will turn, when going ahead, is required for her to turn in when the engines are going astern under the circumstances above described. So marked is this diminution in the turning capability of a ship with her screw suddenly reversed from full speed ahead, that, under some circumstances, a vessel running at right angles upon a straight coast at full speed might avoid going ashore, by keeping on full speed ahead with her helm hard over, when she could not keep off the shore by stopping and reversing her engines.

It follows from the general rules above stated that, with engines going astern whilst the ship has headway through the water, the position and direction of the rudder with reference to the ship's keel is of paramount importance. Under such circumstances, a vessel with a right-handed screw will turn her head much quicker to starboard (her helm being to port, and her engines reversed) than it is possible for her to turn her head to port; and *vice versa* with a left-handed screw (*m*).

(*m*) The authority for most of the statements in the text is the Report, published in 1875, of a Committee (J. R. Napier, Esq., Sir W. Thompson, W. Froude, Esq., J. T. Bottomly, Esq., and Professor Osborne Reynolds) appointed by the British Association to investigate the effect of propellers upon the steering of vessels. Further information upon the subject will be found in *Naval Science*, 1873, p. 89; *Nautical Magazine*, 1879, pp. 529, 608; *ibid.* 1880,

p. 323; *Transactions of the Institute of Naval Architects*, 1879, a paper by A. J. Maginnis, Esq. In connection with this subject, the following facts, collected from the above sources, may be not without interest: A screw steamship usually answers one helm quicker than the other, whether going ahead or astern; but different ships behave differently in this respect. When just starting, a steamship will answer her starboard helm quickest if her screw is right-handed, and

ARTICLE 24.

Article 24.
Overtaking
ship.

Notwithstanding anything contained in these rules, every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, i.e.; in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel, and keep out of the way.

This Article is identical with Art. 24 of the Regulations of 1897, and corresponds with Art. 20 of 1884, and Art. 17 of 1863. The wording is slightly different, but the effect seems to be precisely the same. The opening words of the Article, "Notwithstanding . . .," were originally (n) inserted in order to make it clear (1) that Arts. 20 and 24 do not conflict; that a sailing ship overtaking a steamship is to keep out of the way of the latter; and also (2) that the overtaking vessel is to keep out of the way of the other, although she is crossing the course of the latter (o). The definition of an "overtaking" ship was inserted in 1897; but, although never before stated in the

her port helm if her screw is left-handed. When going ahead at a moderate or full speed she answers her port helm quickest with a right-handed, and her starboard helm with a left-handed screw. In a note to *The Normandie*, 43 Fed. Rep. 161, 162, are given the results of experiments as to the stopping and turning capabilities of an Atlantic liner.

(n) In the Regulations of 1880.

(o) In these cases there was an apparent conflict between Art. 15 and Art. 17 of the Regulations of 1863. See *The Philotaxe* (1877), 3 Asp. M. C. 512; *The Wheatstheaf* and *The Intrepid* (1866), 13 L. T. 612; and between Art. 12 and Art. 17. See *The Peckforton Castle* (1877), 2 P. D. 222; 3 P. D. 11; *The Franconia* (1877), 2 P. D. 8; *The Aurania* and *The Republic*, 29 Fed. Rep. 98.

regulations, it merely formulates the dicta of the judges and decisions of the Courts (*p*). Article 24.

The overtaking ship must, if circumstances permit, under Art. 22, pass astern and not ahead of the other. The latter must, under Art. 21, not alter her course or speed.

Article 10 (*supra*, p. 339) requires a ship that is "being overtaken" to show a light astern. The phrases "overtaking" and "being overtaken" appear to be correlative (*q*).

The Molière (*r*) is a decision showing that under the Regulations of 1884 the duty of the overtaking vessel to keep out of the way did not cease until, in the words of the present Art. 24, "she is finally past and clear."

Under a provision of the Tyne bye-laws, that "when steam vessels are proceeding in the same direction, but with unequal speed, the vessel which steams slowest shall, when overtaken," take certain steps to enable the other to pass, it was held by the Privy Council that this rule applied only to a vessel overtaking and passing another actually on the same course as herself (*s*).

In *The Cayuga* (*t*), the Supreme Court of the United States expressed an opinion that a vessel was "overtaking" another within the meaning of Art. 17 of the Regulations of 1863 only when astern of the other and pursuing the same general direction. In that case it was held that two steamships on intersecting courses (S. by E. and S.S.W.) were crossing ships, although one was abaft the beam of, and going faster than, the other. This case would not be followed in this country, and is inconsistent with other American decisions (*u*).

(*p*) See *The Franconia* (1877), 2 P. D. 8, 12; *per* Lord Herschell, *The Main* (1886), 11 P. D. 132, 139. The observations of Sir R. Phillimore in *The Bresdalbane* (1882), 7 P. D. 186, as to the "crossing" rule prevailing over the overtaking rule, and of members of the Court of Appeal in *The Peckforton Castle* (1878), 3 P. D. 11, doubting the correctness of the above definition of "overtaking," may now be set aside; as also the cases of *The Chanonry* (1872), 1 Asp. M. C. 569, and *The Breadalbane* (1882), 7 P. D. 186, so far

as they bear upon the question as to what is an "overtaking" ship.

(*q*) But see *The Main* (1886), 11 P. D. 132, where the definition by Fry, L. J., of a ship that is "being overtaken" is wider.

(*r*) (1893) P. 217; cf. *The Narragansett*, 10 Blatchf. 475.

(*s*) *The Henry Morton* (1874), 2 Asp. M. C. 466.

(*t*) 14 Wall. 270, 277.

(*u*) *The Oceanus*, 5 Bened. 545. See also *The Governor*, Abbott, Ad. 108; *The Rhode Island*, Olcott, 505; 1 Blatchf. 363.

Article 24.

The rule, that an overtaking ship must keep out of the way, is a rule of the maritime law.

The rule, that an overtaking ship must keep out of the way, was a rule of the maritime law, and was merely formulated by the Regulations of 1863 (*x*). It clashed, however, with the other equally well-established rule, that a ship with the wind free must keep out of the way of another close-hauled. In an American case, where a brig and a schooner were upon converging courses, the schooner overtaking the brig, it was held that the brig was in fault for not keeping out of the way, she having the wind free. It was said that, if she had been close-hauled, it would not have been her duty to keep out of the way (*y*). Under the existing law, a sailing ship overtaking another must keep out of the way, though she is close-hauled, and the other free.

A ship cannot, it seems, be an "overtaking" ship unless she is going faster than the ship ahead (*z*).

Duty of overtaken ship.

Where the overtaking ship was on the quarter of the ship ahead, and the latter altered her course so as to give the other ship more room, it was held that she did not thereby depart from the regulations, so as to be held in fault for a collision which followed (*a*). If an overtaken ship is compelled to alter her course in order to avoid another ship, or for any other reason, she must not alter more than is necessary (*b*); otherwise she will fail to justify her alteration under Art. 27, and will be held in fault under the statute for infringing the regulations.

A ship that was being overtaken wilfully obstructed the other. It was held (in America) that she was alone in fault, although there was some negligence in the other ship (*c*).

"Shall keep out of the way."

The words "shall keep out of the way" have given rise to a difference of judicial opinion in a case where the leading ship had altered her course. In such a case, Lord Esher, M. R., and Lopes, L. J., thought that no more was required of the overtaking ship than ordinary care, and that if, using such care, she nevertheless failed to keep out of the way, she would not be held in fault for an infringement of the Article.

(*x*) *Whitridge v. Dill*, 23 How. 448.

(*y*) *The Clement*, 1 Sprague, 257; 2 Curtis, 363. The Supreme Court was equally divided.

(*z*) *The Franconia* (1877), 2 P. D. 8.

(*a*) *The Franconia* (1877), 2 P. D. 11.

(*b*) *The Saragossa* (1892), 7 Asp. M. C. 289. Cf. *The Woods* (1915), 31 T. L. R. 222.

(*c*) *Gaffner v. Pigott*, 116 Fed. Rep. 486.

Kay, L. J., thought, on the other hand, that the obligation on her is absolute, and that, unless she proved that the action of the leading ship made the collision inevitable, or unless she brought herself within the saving words of Art. 27, she must be held in fault (*d*). Article 24.

The duty of the ship which is being overtaken to show a light astern is considered in a previous Article.

It is the duty of a steamship overtaking a sailing ship to keep out of the way of the latter, both by virtue of Art. 20 and Art. 24.

The following cases illustrate the application of Art. 24:—

A steamship attempted to pass a sailing ship turning up the Thames against a head wind. Owing to the latter going about when she got to the edge of the tide, the steamer ran into her. It was held that the sailing ship was under no obligation to give notice that she was going about, and that the steamer in attempting to pass did so at her own risk (*e*). Cases illustrating the application of Art. 24.

Where a sailing ship, A., with the wind free, was approaching another, B., hove-to, and driving to leeward in such a direction that her side lights were not for some time visible to A., it was held that it was the duty of A. to keep out of the way (*f*). It does not appear whether the decision was on the ground that A. was "overtaking" B., or that A. was "crossing" B. and to windward of her, with the wind on the same side, or whether it was A.'s duty to keep out of the way because she was going free and the other ship hove-to.

When two ships turning to windward in narrow waters are close-hauled on the same tack, one following in the wake of the other, if the leading ship goes about, and the following ship cannot stand on without risk of collision, it is the duty of the latter to keep out of the way of the ship ahead by going about (*g*).

If two ships are turning to windward, and the one ahead, instead of going about, wears, it seems that, whilst she is in

(*d*) *The Saragossa* (1892), 7 Asp. (1865), 2 Mar. Law Cas. O. S. 240.
M. C. 289. (*g*) *The Priscilla* (1870), L. R.

(*e*) *The Palatine* (1872), 1 Asp. 3 A. & E. 125; but see *The Annie*,
M. C. 468. (1909) P. 176.

(*f*) *The Eleanor v. The Alma*
27 (2)

Article 24.

the act of wearing and approaching the ship astern, the latter is not an "overtaking" ship, and that she is not required to keep out of the way (*h*).

When two sailing vessels are cross-tacking up a channel and one is overtaking the other, Art. 17 applies, and the overtaken vessel, when on the port tack, must give way to the overtaking vessel on the starboard tack (*i*).

The Seaton and *The Polcevera* were on nearly parallel (S.W. by W., about) courses, *The Polcevera* being abaft the starboard beam of *The Seaton* and overtaking her. When the ships were three or four miles apart, *The Polcevera* altered her course to S. $\frac{1}{2}$ W., thereby causing risk of collision. It was held that she was in fault for a collision that followed (*k*).

American
cases.

The following American cases illustrate the application of Art. 24:—

A schooner luffing up to come to an anchor, when a short distance ahead of a steamship, was held not to be in fault for a collision which followed (*l*).

The principle that an overtaking ship does not cease to be bound to keep out of the way until she is past and clear of the other ship was applied in the case of the overtaking ship rounding to, to come to an anchor (*m*).

Two tugs were racing (twelve knots) for a schooner. One was overtaking the other, and, before she was clear, attempted to cross her, and so forced her into collision with the schooner. The overtaking tug was held alone in fault (*n*).

Two ships were working to windward in company, one overtaking the other. The leading ship went about, and the overtaking ship did the same, but missed stays and took a stern board into the other. The overtaking ship was held alone in fault for standing too close to the other (*o*).

A collision occurred between an overtaking steamship and

(*h*) *The Falkland and The Navigator* (1864), Br. & Lush. 204.

(*i*) *The Annie*, (1906) P. 176.

(*k*) *The Seaton* (1884), 9 P. D. 1; cf. *Ueberweg v. La Compagnie Générale Transatlantique*, 60 Fed. Rep. 461.

(*l*) *The Helen Keller*, 50 Fed.

Rep. 142.

(*m*) *The Bendo and The Sampson*, 44 Fed. Rep. 439.

(*n*) *The Jesse Spaulding*, 50 Fed. Rep. 583. Cf. *The Sandhill*, (1894). App. Cas. 646.

(*o*) *The Stephen Bennett*, 54 Fed. Rep. 207.

a tug just cast off from the ship ahead, alongside which she had been lashed. The overtaking steamship had not, in accordance with the law in America, signalled her intention of passing the ship ahead. It was held that she was in fault for the collision, although, until the tug cast off, she was not aware of the presence of the tug (*p*).

Article 24.

A vessel was held in fault for attempting to pass another ahead in a channel so narrow that there was risk in making the attempt (*q*).

The rule has been held to apply in a case where the overtaken vessel was going astern (*r*).

ARTICLE 25.

In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

Article 25.

This Article is identical with Art. 25 of the Regulations of 1897, and corresponds with Art. 21 of 1884, from which it differs only verbally.

The Article is substantially the re-enactment of a rule which, having been in force from 1840 (*s*) to 1862, was in that year repealed. In 1846, steamships were required to keep on the starboard side of mid-channel, "due regard being had to the tide and the position of each vessel in such tide." In *The Leith* (*t*), this was interpreted to mean that a ship was to keep on the starboard side, "provided it may be done with convenience and safety" to the other vessel. By the Steam Navigation Act, 1851, s. 27, and the Merchant Shipping Act, 1854, s. 297, the rule was re-enacted with the omission of the words as to having regard to the tide. In several cases (*u*) decided under these Acts, it was held that

9 & 10 Vict.
c. 100, s. 9.

14 & 15 Vict.
c. 79.
17 & 18 Vict.
c. 104.

(*p*) *Robinson v. Detroit, &c. Steam Nav. Co.*, 73 Fed. Rep. 883.

(*q*) *The City of Paris*, 1 Bened. 174; 9 Wall. 634; *The Narragansett*, 10 Blatchf. 475; *The Nova Scotian and The Quebec*, 2 Quebec L. R. 1; *The Farewell*, 8 Quebec L. R. 87.

(*r*) *The Sicilian Prince*, 128 Fed. 133.

(*s*) By the Trinity House regulation of that date.

(*t*) (1849), 7 Not. of Cas. 137.

(*u*) *The Duke of Sussex* (1840), 1 W. Rob. 274; *The Sylph* (1855), 2 Sp. 75; *The Panther* (1853), 1 Sp. 31; *The Malvina* (1863), 1 Moo. P. C. N. S. 357; *The Mæander and The Florence Night-*

Article 25.

25 & 26 Vict.
c. 63.

no practice of the river as to ships keeping in or out of the strength of the tide, and no considerations of convenience, would justify a deviation from the express enactment as to keeping on the starboard side. By the Merchant Shipping Act, 1862, s. 2, the starboard side rule was repealed, and from 1862 to the 1st of September, 1880, vessels were free to navigate on either side of rivers, except in certain waters where a special rule was in force under local Acts. Such special rules are now in force in the Mersey, the Clyde, the Tyne, the Tees, and in Cork or Queenstown harbour (*x*); also in the Danube (*y*). Vessels entering Sorel harbour are required to keep on the port side (*z*).

Consequence
of navigating
on the wrong
side of a nar-
row channel.

The re-enactment of the starboard side rule and its insertion in the regulations are of the utmost consequence to seamen. Any person in charge of a ship who navigates her on the wrong side of a narrow channel, besides being guilty of a misdemeanour, will in most cases subject himself and his owners to liability for any collision occurring when he is on his wrong side.

What is a
"narrow
channel"?

There is considerable difficulty in defining a "narrow channel." A "narrow channel" need be of no particular length, and may be formed by extremities of two breakwaters at the entrance to a harbour (*a*). The rule has been applied to the Straits of Messina (*b*); the Swin, at the Middle Light (*c*); the entrance of Falmouth harbour (*d*); the Cardiff drain at its junction with the entrance channel to the Roath basin (*e*); the Scheldt at Antwerp (*f*); the Golden Gate entrance to

ingale, *ibid.* 63; *The Seine* (1859), Swab. 411; *The Hand of Providence* (1856), *ibid.* 107; *The Unity* (1856), *ibid.* 101; *The Nimrod* (1851), 15 Jur. 1201, are decisions under the starboard side rule of former Acts. Cf. *Occidental, &c. Co. v. Smith*, 74 Fed. Rep. 261.

(*x*) See Appendix for some of these rules. For an application of the Tees rule, see *The Mary Lohden* (1887), 6 Asp. M. C. 262.

(*y*) *The Yourri* and *The Spearman* (1884), 10 App. Cas. 276; *The Oliveden*, (1894) App. Cas. 625.

(*z*) 42 Vict. c. 29 (Canada), Art. 28.

(*a*) Cf. *per* Alverstone, C. J., in *The Kaiser Wilhelm der Grosse*, (1907) P. 259, at pp. 263, 264.

(*b*) *The Rhondda* (1883), 8 App. Cas. 549.

(*c*) *The Minnie*, (1894) P. 336; *The Corennie*, *ibid.* p. 338, note. But, owing to an alteration in lights, the whole breadth of the Swin is now the channel. See *The Oporto*, (1897) P. 249.

(*d*) *The Clydach* (1884), 5 Asp. M. C. 336.

(*e*) *The Leverington* (1886), 11 P. D. 117.

(*f*) *The Whitlieburn* (1900), 9 Asp. M. C. 154. The rule was assumed to apply here.

Article 23.

San Francisco harbour (*g*); the channel leading to the inner harbour, Sydney, N. B. (*h*); the river Humber between the Bull and Clee Ness buoys on the south side and the buoys on the north side (*i*); Queenstown harbour (*j*); the Solent (*k*); the entrance to Cherbourg harbour (*l*); the entrance channel formed by the east and west pier at Swansea (*m*); the Firth of Forth from the Forth Bridge upwards (*n*), and between the Beamer Rock and the Forth Bridge (*o*); the northern entrance to the Great Bitter Lake in the Suez Canal (*p*); the Firth of Clyde above a line drawn from the Clock light-house to the Gantocks beacon (*q*), and the North Lowestoft Roads (*qq*). On the other hand, an outward part of the sea channels at the entrance of the Mersey (*r*); the harbour of Lerwick inside its northern and southern entrances (*s*); and the Sound, six miles wide, outside the western entrance to Vineyard Sound on the American coast (*t*), have been held not to be narrow channels (*u*).

Under the earlier Act there was considerable discussion as to the meaning of "mid-channel" (*x*). In the present Article "fairway or mid-channel" would appear to mean the deep water channel navigable for heavy ships. It would seem that it is to the starboard side of the centre of such deep water channels that vessels, both those navigating within the deep water channel and those navigating in waters which,

Meaning of
"fairway,"
"mid-
channel."

(*g*) *Occidental, &c. Co. v. Smith*, 74 Fed. Rep. 261.

(*h*) *The Cuba v. McMillan*, 26 Sup. Ct. (Canada) 651. The rule also applies to the Narrows at Vancouver, *Bryce v. C. P. Ry. Co.*, 13 Brit. Col. Rep. 446.

(*i*) *The Ashton*, (1905) P. 21.

(*j*) *The Glengariff*, (1905) P. 106.

(*k*) *The Assaye*, (1905) P. 289, 291.

(*l*) *The Kaiser Wilhelm der Grosse*, (1907) P. 259.

(*m*) *The Prince Leopold de Belgique*, (1909) P. 103.

(*n*) *Kerr v. Screw Collier Co., Ltd.*, (1910) App. Cas. 165.

(*o*) *Zihrul v. Cormack* (1904), (O.H.) 12 S. L. T. 294.

(*p*) *The Knaresboro*, (1900) (1907) P. 38, note.

(*q*) *Clyde Navigation Trustees v. Wilhelmsen* (1915), S. C. 392—Ct. of Sess. The Court inti-

mated that they considered, but did not decide, that the Clyde was a "narrow channel" to as far down as a line drawn from Little Cumbrae Lighthouse to Garroch Head.

(*qq*) *The Ravenna*, (1918) P. 26.

(*r*) *The Mæander* (1862), 1 Moo. P. C. N. S. 63 (under a former Act).

(*s*) *The Seymolicus*, (1909) P. 109.

(*t*) *Donnell v. Boston Towboat Co.*, 89 Fed. Rep. 757.

(*u*) For decisions as to the application of this rule to waters in the neighbourhood of New York, see *The Islander*, 152 Fed. 385; *The Wrestler*, 144 Fed. 334 and 153 Fed. 973. The application of the rule to Lowestoft North Roads has not been decided, see *The Try Again*, Ship. Gaz., June 2nd, 1908.

(*x*) *Smith v. Voss* (1857), 2 H. & N: 97.

Article 25. although outside of the deep water channel, are, however, comprised within the "narrow channel," must keep (*y*).

"Safe and practicable."

The words "when it is safe and practicable" qualify the rule; but probably they have no further effect than the saving clause of Art. 27 (*z*). Probably they would apply to a steamship on her right side of the channel falling in with a sailing ship on her wrong side, so as to require the steamship to keep out of the way of the sailing ship in compliance with Art. 20, notwithstanding the fault of the latter in being on her wrong side. The same observation applies in the case of an overtaking ship or any other ship whose duty it is under the regulations to keep out of the way.

How to be applied.

Difficulty has arisen in regard to the application of the crossing rule as between vessels proceeding along a narrow channel and those approaching the narrow channel with a view to proceeding along it. It would seem that, where in such circumstances both rules may be reasonably complied with, then obedience to both rules is incumbent upon the vessels.

Thus, where a ship, A., being in Cardiff drain, was required by the regulations to keep on the starboard side, and the other ship, B., was in the entrance channel to the Roath basin, it was held that they were crossing ships, and that A., having B. on her starboard hand, was required by Art. 16 to keep out of the way (*a*).

So also where two vessels were rounding the Cleve Ness Buoy, the one bound from Grimsby to the sea and the other from the sea to Grimsby, the incoming vessel was held at fault both for being on her wrong side of the channel and also for not keeping her course and speed, and the outgoing vessel was held at fault for not keeping out of the way (*b*). In certain cases, where both the narrow channel and crossing rules were

(*y*) *The Glengariff*, *supra*. It may be noted that "fairway" has been defined in respect of Rule 28 (*h*) of the Thames Rules. "Wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fairway." *Per* Bruce, J., in *The Blue Bell*, (1895) P. 242, at p. 246. This definition was accepted in *The Clutha Boat* 147, (1909) P. 36.

(*z*) See *The Try Again*, *supra*. As to the meaning of these words in former Acts, see *The Unity* (1857), Swab. 101; *The Hand of Providence*, *ibid.* 107; *The Nimrod* (1851), 15 Jur. 1201; *The Panther* (1853), 1 Sp. 31.

(*a*) *The Leverington* (1886), 11 P. D. 117; *The Cuba v. McMillan*, 26 Sup. Ct. (Canada) 651.

(*b*) *The Ashton*, (1905) P. 21.

Article 25.

prima facie applicable, compliance with one or both rules has been dispensed with. Thus the rules of seamanship alone were held to apply to vessels, one of which was proceeding up the eastern side of the entrance channel of Swansea harbour and the other entering the channel from a channel leading to a dock also on the eastern side of the channel. It was held to be reasonable, in the event of two vessels approaching the point of intersection of the two channels, for the vessel with the tide against her to wait until the other had passed (c). In the case of *The Kaiser Wilhelm der Grosse* (d), the circumstances were different from those dealt with above, inasmuch as in that case both vessels were approaching the narrow channel with a view to passing through it, the channel consisting of the strip of water, some half-a-mile wide, lying between the extremities of the two breakwaters protecting the entrance to Cherbourg harbour. The Court, having regard to evidence of custom and to the rules of seamanship, found that in this case the narrow channel rule alone applied, and that vessels leaving and entering the harbour and navigating in the waters adjoining the entrance should keep to their starboard side of the channel and should pass port side to port side.

If a ship's business takes her to the port side of a narrow channel, she is not required by Art. 25 to keep on the starboard side. *The Perim*, in a narrow channel (near Cronstadt), was held not to be in fault for breaking the starboard side rule when, at the time of the collision, she was making for a pilot station on the port side of the channel to discharge her pilot (e). So where a ship, whilst coming out of dock at Antwerp, got her stern to the east side of the river, it was held that she was not therefore to be held in fault. Art. 25, it was held, had no application in such a case (f).

Questions may arise as to the application of the starboard side rule in waters where local rules of navigation are in

Does Art. 25
apply where
local rules
are in force?

(c) *The Prince Leopold de Belgique*, (1909) P. 103; see also *The Try Again*, Ship. Gaz. 2nd June, 1908; and cp. *The Harvest* (1886), 11 P. D. 90; *The Winstanley*, (1896) P. 297; *The Knarborough*, (1900) (1907) P. 38, n.

(d) (1907) P. 259; see also *The Knarborough*, (1900) (1907) P. 38, n., and p. 547, *infra*.

(e) *The Perim*, Ad. Div. 10th Nov. 1886.

(f) *The Whitlieburn* (1900), 9 Asp. M. C. 154.

Article 25.

force, but where there is no rule as to the side of the channel upon which ships are to navigate. It is submitted that in such cases Art. 25 has no application, and that absence in the local rules of a rule requiring vessels to navigate on one side of the channel or the other leads to the inference that vessels are free to navigate in any part of the channel. It was so held under former rules with reference to the navigation of the Thames at Millwall (*g*). The question, however, is not free from doubt; it may be contended that the local rules are supplementary to the general regulations (*h*). Even in foreign waters there is reason to think that the starboard side rule might be applied upon the principle enunciated in *The Fyenoord* (*i*). The general question as to what waters the regulations apply to is considered above, p. 299.

The application of Art. 25 is illustrated by the cases relating to the analogous rule applicable to vehicles on a highway on land. In these cases it has been held that, whilst a driver on his wrong side is required to exercise more than ordinary care to avoid other vehicles (*k*), the rule of the road is not to be treated as the sole criterion of negligence (*l*).

At the trial of a collision case before a jury the question has arisen whether it is for the judge or for the jury to decide what is a narrow channel. The point was not decided (*m*).

**Rules in
American
rivers.**

In America some of the States have passed laws as to the side on which vessels are to navigate; and in some rivers there is a customary track. Sometimes a ship bound up stream must keep on one side or the other of mid-channel, leaving the middle of the river to ships bound down. In the East River, at New York, it is the law that vessels going up or down shall keep in mid-channel. Where a ship is required by law or usage to keep on one side or the other, if she is on her wrong side she is held to be in fault for a collision with

(*g*) *The Ecossaise*, Ship. Gaz. 15th Dec. 1885. See, however, *The Gere*, (1909) P. 287. See also *The Carlotta*, (1899) P. 223, as to supplementing local rules by the sea rules.

(*h*) See *infra*, Art. 30.

(*i*) (1857), Swab. 374.

(*k*) *Pluckwell v. Wilson* (1832), 5 Car. & P. 375.

(*l*) *Wayde v. Lady Carr* (1822), 2 Dow. & Ry. 255; *Wordsworth v. Willan* (1905), 5 Esp. 273.

(*m*) *Australian Steam Nav. Co. v. Smith. The Victoria and The Keilavarra* (1888), 14 App. Cas. 318.

another ship that is on her right side and has done all that the law requires to keep clear (*n*). Article 25.

There is great difficulty in determining the application of some of the Articles of the general regulations to ships navigating a narrow and tortuous river. It appears to have been held by the Privy Council (*o*), in the case of two ships bound up and down a river, and first sighting each other on opposite sides of a point of land round which the river winds, that the ships are not "crossing" ships within the meaning of the regulations; and that, if they are then on different sides of the river, the duty of each is to pursue her course as if the other were not in sight. If, when they first sight each other on opposite sides of a point of land, they are both in mid-channel, or equi-distant from the same shore, it is not clear how, and on which side, the law requires them to pass each other (*p*). It may happen, in such a case, that owing to the way of the ships through the water and the set of the tide it is possible for them to clear each other with certainty in one way, and in one way only.

Difficulty of applying the "crossing" and "meeting" rules in a winding river.

In most tidal rivers there is a customary track for vessels going with the tide, and another for those going against it (*q*). Its course depends mainly on the practice for ships with a fair tide to keep in its strength, and for those with a foul tide to "cheat" it, or keep out of its strength. In a winding river, where there is an off-set of the tide from the points into the opposite bights, ships usually cross from one side of the river to the other at or about particular places in the different reaches. It has been held that such a practice, although not strictly a custom binding upon all ships, is one which a ship is justified in following and in assuming that other ships will follow (*r*). And it appears that this is so although her position with regard to another vessel is such that if she were

Customary course in rivers.

(*n*) 1 Parsons on Shipping (ed. 1869), 582; *The Ivanhoe* and *The Martha M. Heath*, 7 Bened. 213; *The Vanderbilt*, 6 Wall. 225; *The Bay State*, 3 Blatchf. 48.

(*o*) See *The Velocity*, and cases cited below.

(*p*) As to the duty of two ships rounding a bend in a river in opposite directions, one outside the other, see *The Bywell Castle* (1879), 4 P. D. 219, *per* Brett,

L. J.

(*q*) In 1912 there was no rule in the Thames that steamships should keep to the north side going up; the only rule was that of port to port, if there was risk of collision: *The Marie Gartz* (1913), 30 T. L. R. 702—H.L.

(*r*) *The Esk* and *The Niord* (1871), L. R. 3 P. C. 436, 442; but see cases cited note (*u*), p. 421.

Article 25. in the open sea the regulations would apply and require her to act differently. In determining, therefore, what are the proper steps for a ship to take in order to avoid another approaching her in a winding river, the sinuosities of the river, and also the usual course of vessels in the river, must be taken into consideration. In cases where, if each ship continues her course in the usual track, they will pass clear, although if either deviates from it there would be risk of collision, it appears that the regulations do not apply, and that it is the duty of each vessel to continue her course in the usual track and as if the other were not in sight (*s*).

It is a prudent rule in a winding tidal river, in the absence of special regulations, for a steamship about to round a point against the tide to wait until a vessel coming in the opposite direction has passed clear, and a steamship was held in fault for disregarding this precaution in the *Scheldt* (*t*). A vessel coming with the tide should give a warning signal on her whistle before rounding (*u*).

It appears, however, from a decision of the Court of Appeal, that the cases above cited as to the application of the general regulations in a winding river do not necessarily apply in a river where there are in force special rules made under a local Act for the express purpose of regulating its navigation. Although the Thames Rules (of 1872) were identical, as regards crossing ships, with the sea regulations, it seems to

(*s*) *The Pekin*, (1897) App. Cas. 532; *The Velocity* (1870), L. R. 3 P. C. 44; *The Cologne* and *The Ranger* (1872), L. R. 4 P. C. 519; *The Esk* and *The Niord* (1871), L. R. 3 P. C. 436; *The Kjobenhavn* (1873), 2 Asp. M. C. 213, 217; but see the observations of James, L. J., on some of these cases in *The Oceano* (1878), 3 P. D. 60; see also *The Milwaukee*, Brown, Ad. 313. The principle adopted in the above cases by the Privy Council, that in determining the application of the regulations in a winding river the customary track of ships is to be considered, does not appear to have been followed by Dr. Lushington under former Acts and rules. In *The Friends* (1842), 1 W. Rob. 478, and *The Gazette* (1842), *ibid.* 471, he expressed a

strong opinion that where, except for the practice of the river as to keeping in or out of the strength of the tide, the Trinity Rule of 1840 would apply, the case was not taken out of the rule by the practice. And in *The Duke of Sussex* (1840), 1 W. Rob. 274, it was held that the custom of the river as to vessels availing themselves of the strength of the tide was superseded by the Trinity Rule.

(*t*) *The Talabot* (1889), 6 Asp. M. C. 602; *The Ezardian*, (1911) P. 92. So in America: *The F. & P. M.* (No. 2), 44 Fed. Rep. 698; *aliter*, where there is another channel free for the descending ship: *The City of Springfield*, 26 Fed. Rep. 158.

(*u*) *The Kennet*, (1912) P. 114.

have been doubted whether the decision in *The Velocity*, and other cases following it, that two ships rounding a point are not within the "crossing" rule, would be followed in a similar case arising under the Thames Rules (x). The particular point decided in *The Velocity* does not arise upon the existing Thames Rules, which contain no rule corresponding to the "crossing" rule there discussed. But the principle involved in that and the other decisions above referred to is of wide application, and has an important bearing upon the existing Thames Rules, as well as other rules for the navigation of winding rivers. That principle is that the questions, Whether there is risk of collision? and, What rule is applicable where there is such risk? depend rather upon the relative positions of the two ships in the river as regards mid-channel, and upon the customary track of ships in the river, than upon the heading of the two ships at a particular moment.

Article 25.

The following cases illustrate the view taken by the Supreme Court of the United States as to the application of the Regulations of 1863 in a winding river.

American cases as to the application of the regulations in a winding river.

A sailing ship descending a river on a southerly course sighted a steamship ascending it. In accordance with the practice of the river, the sailing ship was on the west, and the steamship on the east, side of the channel. At a point between the two vessels the river took a bend in a southeasterly direction. On reaching this point the sailing ship's helm was put to starboard in order to round the bend. Instead of porting, so as to resume her course in the usual track along the west bank at a point where the channel turned again to the west and ran in its original southerly direction, the sailing ship continued the course she was on after her helm had been put to starboard. Crossing the channel to the east shore she ran into the steamship, which had continued her original course along that shore. It was held that the sailing ship was in fault for deviating from the customary track along the west shore; that her duty under the rule (identical with Art. 18 of the Regulations of 1863)

(x) *The Oceano* (1878), 3 P. D. 60.

Article 25.

requiring her to keep her course was to keep her course along the west shore, deviating from a straight course only so far as the winding of the river required (*y*). The judgment of the Supreme Court in this case is to the effect that when a point of land or other obstruction in the navigation interferes with the literal application of the regulations, they are, nevertheless, to be complied with so far as possible; that a vessel required by the law to keep her course, if she is compelled by an obstruction or bend in the river to deviate from it, must resume her original course as soon as possible. And the Court expressly held, that where two vessels will pass clear if each adheres to the customary track, the regulations have no application; and that a vessel deviating from the customary track in supposed obedience to the regulations is in fault.

In *The Free State* (*z*), a sailing ship was crossing a river diagonally, for a temporary purpose, when she sighted a steamship approaching with risk of collision; the Supreme Court held that the duty of the sailing ship was to keep on her course across the river. The sailing ship ascending the river on a northerly course and being overtaken by a steamship, starboarded until her head was N.W. by N., in order to give the steamship more room to pass on her starboard hand. While crossing the river on the N.W. by N. course she sighted another steamship descending the river and preparing to pass the ascending steamship port side to port side. After being passed by the ascending steamship the sailing vessel ported and attempted to follow in her wake, so as to pass the descending steamship port side to port side. In doing so she came into collision with the latter, and it was held by the Supreme Court that she was in fault for not keeping her N.W. by N. course.

When two steamships proceeding in the same direction were rounding a point or bend in a river nearly abreast, it was held that it was the duty of each to keep in her own water, and not attempt to cross the course of the other. The outside boat was held in fault for a collision that occurred

(*y*) *The John L. Hasbrouck*, 3 Fed. Rep. 819.
 Otto, 405; cf. *The New York*, 82 (*z*) 1 Otto, 200.

while attempting to get in to the shore across the bows of the other (a). Article 25.

In *The Milwaukee* (b), it was held that the question whether, in a winding river, two ships were meeting "end on" is to be determined by their general course in the river, and not by their compass course at a particular moment while they are pursuing the windings of the channel.

Where conical buoys were placed down the centre of a navigable channel, a vessel was held free from blame for having treated them as starboard hand buoys, even though by so treating them she brought herself on to the wrong side of the navigable channel (c). System of buoyage and narrow channel.

ARTICLE 26.

Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats. Article 26.
Sailing ships to keep out of the way of fishing craft.

This Article is identical with Art. 26 of the Regulations of 1897, where it first appeared. It had then already been decided (d) that as between a sailing ship and an encumbered steam fishing vessel, it was the duty of the sailing ship to keep out of the way, and this Article was introduced to complete the code of rules applicable to the circumstances, by providing for the *à fortiori* case of a sailing vessel and an encumbered sailing fishing vessel (e). A steam drifter with her engines stopped, but with steam on and engines ready, proceeding under a small sail and shooting her nets, was held not to be a sailing fishing vessel under this Article (f). "Fishing with nets" includes shooting nets preparatory to fishing (g).

(a) *The Oceanus*, 12 Blatchf. 430.

(b) Brown, Adm. 313.

(c) *The Gustafsberg*, (1905) P. 10. For uniform system of buoyage, see Channel Pilot, 9th ed. Pt. I. p. 29.

(d) In *The Tweeddale* (1889),

14 P. D. 164. For the rights and duties of fishing vessels generally, see *supra*, p. 337.

(e) Per Buckley, L. J., *The Grovehurst*, (1910) P. 316, 333.

(f) *The Pitgavenny*, (1910) P. 215.

(g) *Ibid.*

Article 26.

The duty of steam vessels to keep out of the way of sailing vessels of every kind is laid down in Art. 20.

ARTICLE 27.

Article 27.

**Proviso as to
special cir-
cumstances.**

In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

This Article is identical with Art. 27 of the Regulations of 1897, and with Art. 23 of 1884, and Art. 19 of 1863, except for the insertion of the words "and collision."

The concluding words of Art. 27, while bearing a strong resemblance to those of sect. 419 (4) of the Merchant Shipping Act, 1894, now repealed, are not identical with them. The statute, inasmuch as it did not refer to "immediate danger," would seem to have conferred a wider exemption than does the Article. It may further be observed that while the Article refers to a departure from "the above rules," the statute refers to "a departure from the regulations." The exact meaning to be attached to the phrase "the above rules" found in the Article has not been determined, although an opinion was expressed in a dissenting judgment in the Court of Appeal (*h*), that "above rules" means that group of "Steering and Sailing Rules" of which Art. 27 forms the last. If this view be correct, then the statute not only conferred a wider exemption than Art. 27 in respect of rules to which the Article is applicable, but also conferred an exemption in respect of rules to which the Article is not applicable at all. It may be suggested in support of this proposition that a justifiable breach of rules, other than the "Steering and Sailing Rules" (*i*), in circumstances in which there is no "immediate danger," is more readily conceivable than is such a breach of the "Steering and Sailing Rules."

A case in which the statute was applied, and in which, it is submitted; the Article would not have been applicable,

(*h*) *Per* Fletcher Moulton, L. J., in *The Bellanoch*, (1907) P. 170 at p. 189.

(*i*) With the possible exception of Art. 28, as to which see *infra*, p. 449.

was that of *The Chilian*. In this case a vessel in fog employed a mouth-horn in place of the mechanical fog-horn, which she was required to carry. Her departure from the rules was held to be "necessary" within the statute (*k*). Article 27.

It has, however, been held that Art. 27 justifies a departure from any of the regulations, including those as to lights and fog signals, in order to avoid immediate danger. The question has been raised whether a steamship at anchor in a fog is justified by Art. 27 in sounding her steam whistle for the purpose of attracting the attention of another vessel heading straight for her and apparently not hearing her bell. It would seem that such a use of the whistle might, under exceptional circumstances, be justified (*l*). But the circumstances must be very exceptional to justify the use of any light or fog signal other than those prescribed by the regulations; and a seaman would not be held in fault for not instantly arriving at the conclusion that a departure from the regulations was necessary (*m*).

In *The Benares* (*n*) (1883), it was held by the Court of Appeal, that where there is one and only one "chance of escape" from collision, a seaman is justified in taking the benefit of that chance, although it necessitates a departure from the regulations. Under former regulations there was difficulty in reconciling this decision with dicta in *The Khedive* (*o*) to the effect that danger from collision was not a circumstance justifying departure from the regulations. It was probably to remove this difficulty that the words "and collision" were inserted in Art. 27.

The important distinction between *The Khedive* and *The Benares* must, however, not be lost sight of. In the former case, the ship which was held in fault, under the statute, for

(*k*) (1881), 4 Asp. M. C. 473; *The Calypso* and *The Mississippi*, Ad. Ct. 7th, 8th and 9th March, 1878 (for facts, see *supra*, p. 61); see also *The Coogee*, Vict. L. R. xxix. p. 874; *The Gladys*, (1910) P. 13; *The Trave*, 68 Fed. Rep. 390.

(*l*) Cf. *The Merchant Prince* (1885), 10 P. D. 139.

(*m*) See *The Oregon*, 51 Davis, 186, as to a ship at anchor exhibiting a flare.

(*n*) (1883), 9 P. D. 16.

(*o*) (1880), 5 App. Cas. 876. See the observations of Lords Watson and Blackburn, pp. 895, 902; and of Field, J., in the American case, *The Maggie J. Smith*, 16 Dav. 349, 354. In *The S. Anderson*, 26 Fed. Rep. 392, it was held that the closeness of the ships, when first seen by each other, was a circumstance justifying departure from the regulations.

Article 27. having infringed the regulations, did what was, though not a negligent act, in fact the wrong thing in point of seamanship, and thereby, probably, caused the collision. In *The Benares* the ship did what from a seaman's point of view, and apart from the regulations, was the right thing; and though in the result it failed to avert a collision, it did not cause the collision, which was, from the first, inevitable. The difference between the two cases is that, although in neither of them was there negligence on the part of those on board, in the one case the House of Lords held that the regulations had been infringed, in the other the Court of Appeal held that they had not been infringed.

Regulations
never to be
departed from
except for
necessity.

It is sometimes attempted to urge this Article as an excuse for a departure from the regulations where an adherence to them would have prevented a collision. In such a case Art. 27 has no application; nor does it in any way affect the universal application of the regulations where it is possible to apply them so as to avert collision. This is well illustrated by the case of *The Khedive* (p). There a steamship was suddenly put into a difficulty, and risk of collision was caused, by the wrong manœuvre of another steamship approaching her. The former stopped her engines, but did not immediately reverse, though she did reverse before the collision. By not reversing immediately the officer in charge did not show himself wanting in ordinary care, skill, or nerve, though he committed an error of judgment. It was held that he had departed from the regulations.

Safety
attained by
their uniform
and exact
observance.

A vessel is not justified in departing from the regulations because she fears that the other ship will not comply with them. In a case decided under the Trinity Rules of 1840, Dr. Lushington thus laid down the general principle: "I cannot conceive that anything would be more likely to lead to mischievous consequences than to suppose that a vessel whose duty it is to keep her course should anticipate that another vessel will not give way, and so give way herself. The consequence would be that there would be no certainty; whereas the doctrine I have upheld, supported by your (*i.e.*, the nautical assessors') authority, is that in cases of this

Article 27.

description you ought always to follow the general rule. The certainty which results from adherence to general rules is, in my opinion, absolutely essential to the safety of navigation" (q). Again: "All rules are framed for the benefit of ships navigating the seas, and no doubt circumstances will arise in which it would be perfect folly to attempt to carry into execution every rule, however wisely framed. It is, at the same time, of the greatest possible importance to adhere as closely as possible to established rules, and never to allow a deviation from them unless the circumstances which are alleged to have rendered such a deviation necessary are most distinctly proved and established; otherwise vessels would always be in doubt and doing wrong" (r).

The case of *The Superior* (s), decided under the Trinity House Rule of 1840, is a strong one, as showing that the necessity of observing rules of navigation, wherever it is possible to do so, has been insisted upon from the first. A. was a brig bound down the Thames against the flood-tide, with the wind free. B., a brig bound up the river, was required by the rule (t) to pass to the northward of A. Close ahead of A. was a schooner, which, in violation of the Trinity Rule, passed to the northward, or inside B. Expecting that A. would follow in the wake of the schooner and pass inside, B. starboarded, and in attempting to pass outside or to the southward of A. came into collision with her. B. alleged that there was no room for her to pass between the schooner and A. It was held that the fact of the schooner having safely passed B. on the wrong side—of her having violated the rule with impunity—was no justification to B. for herself violating the rule, in the expectation that A. would not obey the rule, but would follow the schooner, and pass inside.

(q) *The Test* (1847), 5 Not. of Cas. 276. See also *The Superior* (1849), 6 Not. of Cas. 607. At this date there was in force no rule or enactment corresponding with Art. 27. A saving clause restraining the indiscriminate application of the statutory rules of navigation first appeared in the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 296.

(r) *The John Buddle*, 5 Not. of Cas. 387; cf. *The Great Eastern* (1865), 3 Moo. P. C. N. S. 31; *The Highgate*, *supra*, p. 389.

(s) 6 Not. of Cas. 607.

(t) It does not clearly appear whether she had the wind free or was close-hauled. In either case her duty as to passing to the northward of the other ship was the same.

Article 27.

In *The Khedive* (*u*), the safety which arises from universal obedience to the regulations, where it is possible to obey them without causing a collision, was strongly insisted upon by the House of Lords. They must, it was said, be complied with, although in the particular case it may seem to be better seamanship not to do so. "These rules . . . are general rules," said Lord Hatherley, "to be adopted by all persons having charge of the navigation of vessels, with the exceptions which have been pointed out (as to immediate danger). This rule (as to stopping and reversing) is not laid down merely for the sake of the vessel commanded by the man who breaks it, but for the sake of the vessel commanded by the man approaching at a distance, and who has no right or reason to suppose that he will break it. If the rule is observed, every person will know precisely what he is to do, and will say, 'I will carry out my directions entirely with that knowledge.' On the other hand, if the Court allows these rules to be lightly departed from, the result will be the very evil which the Act was intended to prevent." And in the same case, Lord Watson (*x*) said:—"It was the deliberate policy of the legislature to compel sea captains, where their vessels are in danger of collision, to obey the rule (Art. 16 of 1863), and not to trust to their own nerve and skill."

Art. 27 prevents the regulations being applied so as to cause collision.

Of the corresponding Article of the former law Dr. Lushington said that it was not a directory enactment, telling persons to do this or that, but that it released them from the severe obligation of complying with the regulations under circumstances which would render obedience to them dangerous, when, by deviation, they might escape danger (*y*). But Art. 27 applies only to cases where "there is immediate danger, perfectly clear" (*z*); and the departure from the rules must be no more than is necessary (*a*). It "does not prescribe any particular measures that should be adopted in departing from the strict terms of any of the previous regu-

(*u*) *Stoomvaart Maatschappij Nederland v. Peninsular and Oriental Steam Navigation Co.*, *The Khedive* (1880), 5 App. Cas. 876, 895, 904, 909.

(*x*) (1880), 5 App. Cas. 904.

(*y*) *The Eliza* and *The Orinoco*

(1865), Holt, 98. See *The Concordia*, L. R. 1 A. & E. 93, 97.

(*z*) *The Allan* and *The Flora* (1866), 14 L. T. 860; *The Moderation* (1863), 1 Moo. P. C. 528.

(*a*) *The Saragossa* (1892), 7 Asp. M. C. 289.

Article 27.

lations that it governs, but it merely states that in construing and obeying these regulations as far as possible you may take into consideration urgent attendant circumstances. . . . It is common sense; for if any rule were laid down by Act of Parliament, or any other authority, that could never be departed from in certain states of circumstances, such a rule would necessarily involve, on many occasions, the destruction of ships which it was intended to preserve" (b). "The duty is to avoid collision by observing the rules, primarily; by departing from them, if necessary, to avoid danger" (c).

Not only is departure from the rule of the road excused by Art. 27, where the rule cannot be obeyed without collision, but a literal observance of the regulations cannot be set up as a defence where the collision might have been avoided by ordinary care (d). "When one person neglects his duty, and so puts another into danger, the second is not justified in doing nothing to avert that danger, though it is caused entirely by the fault of the first" (e). "You may depart, and you must depart, from a rule if you see with perfect clearness, almost amounting to certainty, that adhering to the rule will bring about a collision, and violating a rule will avoid it; and, indeed, this is provided for by the 19th Article" (of the Regulations of 1863) (f). And, again, "you have no right to stand in a difficulty upon a right, though it may be a perfectly good right, obstinately, recklessly, and regardless of the safety of others" (g). Art. 27, in fact, merely states the general principle, which, it is submitted, would prevail in the absence of such an enactment. The principle was thus stated by Best, C. J.:—"Although there may be a rule of the sea, yet a man who has the management of one ship is not to be allowed to follow that rule to the

Duty to avoid collision, and for that purpose to depart from the regulations if necessary.

(b) *Per* Dr. Lushington in *The Allan and The Flora*, *ubi supra*; and see *The Superior*, *ubi supra*. The Supreme Court of the United States used similar language with regard to the operation of Art. 19 of the Regulations of 1863 in *The Cayuga*, 14 Wall. 270; *The Sunny-side*, 1 Otto, 208.

(c) *The Hercules*, 51 Fed. Rep. 452; *The Spiegel*, 84 Fed. Rep. 1002.

(d) See further on this, *supra*, p. 11.

(e) *Per* Brett, L. J., *The Jane Bacon* (1879), 27 W. R. 35.

(f) *Per* Dr. Lushington, in *The Boanerges* and *The Anglo-Indian* (1865), 2 Mar. Law Cas. O. S. 239. See also *The Ida and The Wasa*, *infra*; *Handayside v. Wilson* (1828), 3 Car. & P. 528; *The Lady Anne* (1851), 15 Jur. 18.

(g) *The Legatus* and *The Emily* (1865), Holt, 217.

Article 27. injury of a vessel of another, where he could avoid the injury by pursuing a different course" (*h*).

A barque close-hauled on the starboard tack was held to be solely in fault for a collision with a barque that had just been in stays, and had not gathered way on the port tack. The Court (in Ireland) said that if a ship insists on her right, under a rule of navigation, of not giving way, and makes no effort to prevent the collision when it is in her power to do so, she will be held not to have performed her duty, and to be in fault for the collision (*i*). So a ship on the port tack was (in 1850) held in fault for a collision with another having the wind free, which she had seen a mile and a-half off and did not attempt to avoid (*k*); and more recently a schooner on the starboard tack was held in fault for doing nothing before she came into collision with a smack hove-to on the port tack (*l*).

The Lady Anne, close-hauled on the starboard tack, was meeting another ship, close-hauled on the port tack. It was held that *The Lady Anne* might have avoided the collision by putting her helm down at the last moment and easing off her head sheets, and that she was in fault for not doing so (*m*).

So a sailing ship will be held in fault for a collision with a steamship if she makes no attempt to avoid a collision, where it is clearly in her power to do so. In such a case a mere adherence to the letter of the regulations is no justification. In *The Sunnyside*, a sailing ship, with the wind free, saw the mast-head and green lights of a steamship half a point on her port bow, a considerable distance off. The lights were those of a tug, drifting before the wind, at about a mile and a-half an hour, and waiting for employment. The sailing ship kept her course, and did not alter her helm until it was too late to avoid the tug. It was held in America by the Supreme Court that the sailing ship was in fault, as well as

(*h*) *Handyside v. Wilson* (1828), 3 Car. & P. 528; see also *Mayhew v. Boyce* (1816), 1 Stark. 423; cf. *The C.R. Stone*, 49 Fed. Rep. 475; *The Hercules*, 51 Fed. Rep. 452, 475.

(*i*) *The Ida and The Wasa* (1867), 15 L. T. 103.

(*k*) *The Commerce* (1850), 3 W. Rob. 287; but see the observations of Sir J. Colville on this case (1879), 4 App. Cas. 672.

(*l*) *The Rosalie* (1880), 5 P. D. 245.

(*m*) *The Lady Anne* (1851), 15 Jur. 18.

Article 27.

the tug (*n*). In *The Zadok* (*o*), a sailing ship was held in fault for a collision in a fog with a steamship, because, amongst other acts of negligence, after she heard the whistle of the steamship approaching, she had no hands stationed at the braces ready to let them go so as to assist the helm when the steamship came into sight at close quarters.

The Tasmania (*p*), a steamship going three and a-half knots, saw the red light of another steamship one mile or more distant, and two points upon her port bow. When the latter was about four ship's lengths off, the green came into view. No alteration in speed or helm was made until the hull of the other ship was seen. The question was whether *The Tasmania* was in fault, under Art. 23, for not having altered her course before the collision. After different decisions in the Courts below, the House of Lords held that she was not in fault. And in *The Highgate* (*q*), Sir James Hannen distinguished the then subsisting decision of the Court of Appeal in *The Tasmania*, and refused to hold a sailing ship in fault for not taking any step to avoid an approaching steamer until collision was imminent, saying that, "It is only where a clear case of necessity is made out that a captain can excuse himself for not following the rule."

Under this Article must be considered cases in which one of a fleet of warships has come into collision with a merchantman; the question in such cases usually having been whether the approach of such a fleet on a crossing course upon the port bow, in the case of a steamship, or from any direction, in the case of a sailing ship, constitutes such "special circumstances" under the Article or otherwise brings about such a state of affairs, that it becomes the merchantman's duty to keep out of the way (*r*).

Duty to keep out of the way of warships.

(*n*) *The Sunnyside*, 1 Otto, 208; *The General Lee*, 32 Fed. Rep. 830, is a similar case. In *The Patria*, 92 Fed. Rep. 411, an overtaken sailing ship was held in fault for not luffing; but see *The Bougainville v. The James C. Stevenson* (1873), L. R. 5 P. C. 316, for a case of premature alteration of her course by the sailing ship.

(*o*) (1884), 9 P. D. 114.

(*p*) (1890), 15 App. Cas. 223, reversing 14 P. D. 53.

(*q*) (1890), 6 Asp. M. C. 512.

(*r*) As to the warship, see *ante*, p. 346. As to the merchantman, breaches of Arts. 21, 27, and 29 did not, where the other vessel was not bound by the section, involve the statutory penalty; *The Etna*, (1908) P. 269; *The Sans Pareil*, (1900) P. 267.

Article 27.

The merchantman is bound by the regulations, and must also, it seems, pay attention to any notice (*s*) which the Board of Trade may issue with reference to the meeting of merchantmen with fleets of warships. The warship must conform to the collision regulations imposed upon His Majesty's ships by Order in Council (June, 1899), which are identical in terms (*t*) with those promulgated under the Merchant Shipping Act, although made independently of that Act (*u*). The navigating officer must also conform with the directions contained in the King's Regulations and Admiralty Instructions.

In the light of these regulations it appears that in these cases two questions have to be determined by the Court. Firstly, was there a duty upon the merchantman, having regard to the size and formation of the fleet, and to any notice (if known (*x*)) of the Board of Trade, to keep out of the way? Secondly, was the conduct of the warship, having regard to the duties (sometimes apparently inconsistent), imposed upon her by the two sets of regulations, in the circumstances correct?

In *The Sans Pareil* (*y*) it was unanimously held by the learned Lords Justices that the tug with a vessel in tow, which was approaching a fleet of thirty warships in four columns, having them on her port bow on a crossing course, was guilty of negligence in keeping her course and speed. In this case, however, such negligence was not held to have contributed to the collision.

In *The Melampus* (*z*) a steamship kept her course and speed on meeting a fleet of warships, approaching her on the port bow, the steamship being about to cross ahead of *The Melampus*, which was following the starboard hand vessel of two other warships sailing abreast. The steamship was found to have acted properly, and the warship was found at fault for not taking proper steps to keep out of her way.

(*s*) *The Etina*, (1908) P. 269; but a foreign vessel not knowing of the notice was held not bound by it: *H.M.S. King Alfred*, (1914) P. 84.

(*t*) The order contains some provisions as to lights and signals in addition to those contained in the

ordinary collision regulations.

(*u*) See *ante*, p. 346.

(*x*) *The Etina*, (1908) P. 269, at p. 279.

(*y*) *The Sans Pareil*, (1900) P. 267.

(*z*) *The Melampus*, Ship. Gaz. Dec. 22nd, 1903.

In *The Sutlej* (a), a sailing ship was approaching a fleet of eight warships, formed into two columns of four, and was shaping to pass between the third and the last vessels of the port column from their port side. It was held that the duty of the sailing ship was to keep her course and speed, and that she was in fault for not doing so. The navigating officer of *The Sutlej* in this case found himself compelled by the Collision Regulations, as applied to His Majesty's ships, to keep out of the way of the sailing ship; and at the same time by Art. 597 (sub-rule 12) of the King's Regulations, "never to change the course without directions from the captain, unless to avoid immediate danger." Under the circumstances he was held to have starboarded in time.

In *The Etna* (b), a merchantman, which had, by reason of faulty look-out, brought herself within the port and the starboard columns of a flotilla of torpedo boats, which was approaching her on her port bow upon a crossing course, was held at fault for a breach of Art. 27 in not keeping out of the way. *The Wear*, with which she collided, which was the second ship in the port column, was held in fault for not taking steps to keep out of the way in proper time, regard being paid to her conflicting duties under the regulations.

In *The Colstrop* (c), the point was taken that it was the duty of a merchantman approaching a flotilla of twenty destroyers in three columns on a course, which would take her between the port and middle columns, to keep out of the way. It became unnecessary to decide this point, the merchantman being found to blame on other grounds.

In the *H.M.S. King Alfred* (d), where the facts were similar to those in *The Melampus*, as cited above, it was held it was not bad seamanship or negligence on the part of those in charge of the merchantman to observe the international rule.

Great caution must be used in applying the principle recognized in some of the above cases, that under some circumstances it is the duty of a ship to disobey the regulations. It may be applied only where the circumstances are

Danger of departing from the regulations.

(a) *The Sutlej* (1905), T. L. R. 325.

(b) *The Etna*, *supra*.

(c) *The Colstrop*, Ship. Gaz., Oct. 24th, 1908.

(d) *H.M.S. King Alfred*, (1914) P. 84.

Article 27. very exceptional. "The principle of law that you are not to adhere to strict rules of navigation but avoid an accident if possible is a doctrine to be very carefully watched" (e). The Court will not hold a ship in fault for not departing from the regulations in a case where they were *primâ facie* applicable, and the other ship failed to comply with them, unless it is clearly proved that those on board the first ship might with reasonable care have seen that the other ship was not going to comply with the regulations; and further, that they should have seen this at a time when it was in their power to avoid the collision.

A ship, A., close-hauled on the port tack, and another, B., on the starboard tack with the wind free, were on crossing courses. A. stood on until immediately before the collision, when she luffed. B. neglected to keep out of the way, as required by the regulations. It was held that A. was in fault as well as B., because she pertinaciously kept her course, when she ought to have seen that B. was not going to keep out of the way in compliance with the law; and in so deciding, the Court relied on *The Commerce* (f). The Privy Council reversed the decision of the Court below, and held that A. was not in fault. Sir J. W. Colville, in delivering the judgment of the Privy Council, said: "Their lordships remark that, though the principle involved in that case (*The Commerce*) may be in itself a sound one, it is one which should be applied very cautiously, and only when the circumstances are clearly exceptional. They conceive that to leave to masters of vessels a discretion as to obeying or departing from the sailing rules is dangerous to the public; and that, to require them to exercise such discretion, except in a very clear case of necessity, is hard upon the masters themselves, inasmuch as the slightest departure from these rules is almost invariably relied on as contributory negligence" (g).

If the regulations cannot be complied with, or cannot, if com-

Art. 27 is not intended to apply to a case where the regulations cannot be complied with, nor to a case where non-compliance could not by possibility have caused the

(e) *Per* Dr. Lushington, *The Test* (1847), 5 Not. of Cas. 276.

(f) (1850), 3 W. Rob. 287.

(g) *The William Frederick* and

The Byfoged Christensen (1879), 4 App. Cas. 669; and see *The Legatus* and *The Emily* (1865), Holt, 217.

collision. In such a case non-compliance with the regulations is immaterial upon the question which ship is in fault, but that is so by virtue of the general law, and not under Art. 27 (*h*). But it appears that where the collision, though in fact inevitable, may, in the opinion of a seaman of ordinary skill, be avoided by departing from the regulation (*i*) which is *primâ facie* applicable, the ship will not be held in fault for a departure from the regulations merely because the collision has occurred (*k*).

Article 27.

plied with,
prevent the
collision,
Art. 27 does
not apply.

Nothing in the regulations requires a ship to take a measure which puts her into imminent peril (*l*). A vessel is not bound to obey the rule requiring her to port, if, by porting, she will incur serious danger by going ashore (*m*), or striking another ship (*n*). In such a case Art. 27 may apply to both vessels, or to one of them. It excuses non-compliance with the Article requiring her to port on the part of the one vessel, because of the rock or shoal (*o*); and if, in order to avoid a collision, it is necessary for the other vessel to depart from the regulations, it is her duty to do so, and Art. 27 excuses her departure.

A ship is
not bound to
take a step
dangerous to
herself.

Where the Admiralty authorities gave directions that ships should not carry the regulation lights exhibited, but only show them in case of emergency in order to avoid collision, in waters where German submarines were operating, it was held that failure to comply with Arts. 1 and 2 might be justified under the direction in Art. 27 to have due regard "to all dangers of navigation" (*oo*).

Lights in
waters in-
fested with
German
submarines.

So, where a ship required by the regulations to keep out of the way is unable to do so, it is the duty of the other not to keep her course, but herself to keep out of the way. Two vessels, close-hauled on opposite tacks, were crossing, and the

"Special cir-
cumstances."

(*h*) See *The City of Antwerp* and *The Friedrich* (1868), L. R. 2 P. C. 25, 34. Cf. *per* Smith, L. J., in *The Sans Pareil*, (1900) P. 267, 282: "Where a man is called upon to do his best because the collision regulations cannot be carried out, there cannot be a breach of the regulations within sect. 419 of the Merchant Shipping Act, 1894."

(*i*) *The Benares* (1884), 9 P. D. 16.

(*k*) See *The Khedive* (1880), 5 App. Cas. 876, 902.

(*l*) *The St. Cyran v. The Henry* (1864), 12 W. R. 1014. In *The Sans Pareil*, *supra*, *The East Lothian* would, it is submitted, have been justified under the principle stated in the text, in departing from Art. 21.

(*m*) *The Lucia Jantina v. The Mexican* (1864), Holt, 130.

(*n*) *The Concordia* (1866), L. R. 1 A. & E. 93.

(*o*) *The Hazelmere*, (1911) P. 69.

(*oo*) *The Algol*, (1918) P. 7.

Article 27. ship on the port tack could not bear up for fear of collision, and could not go about because of a shoal. It was held (in America) that the ship on the starboard tack was in fault for not keeping out of the way (*p*).

Two ships were beating to windward in company on the same tack. The leeward ship had to go about for a third ship. The windward ship did not observe her go about and fouled her. It was held that there were "special circumstances" which made it the duty of the windward ship to go about when the other did (*q*).

A tug, whilst being overtaken by another vessel, was compelled to alter her course to clear a third ship. The overtaking vessel, in consequence of the tug's alteration of course, fouled the tow. She was held alone in fault (*r*).

A steam trawler, encumbered with trawl, may be held justified, under Art. 27, in not taking such steps as would naturally be incumbent on a steamship to keep out of the way of a sailing ship (*s*).

On the other hand, where two steamships were approaching a pilot station, and the vessel which had the other on her starboard hand had brought herself to a standstill, it was held that there were no "special circumstances" within Art. 27 to justify a breach of the crossing rule (*t*).

Disabled ship. If a vessel is partially disabled, or in a condition which prevents her answering her helm readily, she must take precautions in time, and do all she can to comply with the regulations effectually (*u*). A brig hove-to, reefing top-sails, was held in fault for not porting (*x*). Where a ship had no head sail on her, and the regulations required her to bear up, it was held that it was the duty of those on board to take the after sail off her, so that she might be better able to bear up (*y*).

If it appears that a vessel is unable to comply with the regulations owing to her being disabled, or in stays, or for

(*p*) *The Ann Caroline*, 2 Wall. 538.

(*q*) *The Commodore Jones*, 25 Fed. Rep. 506.

(*r*) *Whiteash v. The Winnie*, 64 Fed. Rep. 893.

(*s*) *The Tweedsdale* (1890), 14 P. D. 164 at p. 169. See also *The Grovehurst*, (1910) P. 215;

The Pitgavenny, (1910) P. 330, and see cases under Art. 20, p. 386.

(*t*) *The Albano*, (1907) A. C. 193.

(*u*) *The Test* (1847), 5 Not. of Cas. 276.

(*x*) *The Blenheim* (1853), 1 Sp. 285.

(*y*) *The Calcutta* (1870), 21 L. T. 768.

other reasons, it is the duty of those on board the other to watch her closely. They have no right to speculate on the disabled ship being able to keep out of the way, but they should themselves at once take steps to make the collision impossible (z).

Article 27.

It was held in America that the fact of a schooner's flying-jib being carried away was no excuse for her not bearing up; and that the other ship was not in fault because she failed in the daytime to see that the schooner was partially disabled (a).

To justify a departure from the regulations which is alleged to have been necessary to avoid immediate danger, there must be clear proof that an adherence to them would have caused such danger, and also that the step taken was the right step (b). It is not enough to show that, if the approaching ship had taken one manœuvre when others were open to her, obedience to the regulations would have increased, instead of diminishing, the risk of collision. Therefore, where the steamship *San Salvador* was approaching the steamship *Memnon* on a crossing course, having her on her own starboard bow, and taking no step to keep out of the way, and the speed of the latter was such that in the existing circumstances she would probably have passed safely across the former's bows, *The Memnon* was held in fault for not stopping her engines, although, had the *San Salvador* kept her course, the risk of collision would have been increased, and not diminished by *The Memnon* slackening her speed (c). Where it is possible to comply with the regulations, Art. 27 would be no excuse for departing from them. In a case under the Trinity Rules of 1840, it was held that it was no excuse for not observing the rules that the night was very dark, and that the other ship was not seen until she was very close (d).

Necessity
of departure
from the
regulations
must be
proved.

Where two steamships were meeting in the Thames end on, and one starboarded in order, as was alleged, to clear a barge, in the absence of proof that the starboarding was

(z) *The Priscilla* (1870), L. R. 1 A. & E. 125. See also *The Ch. Raab*, Brown, Adm. 453.

(1866), L. R. 1 A. & E. 93. And see *The Corsica*, 9 Wall. 630.

(a) *The H. P. Baldwin*, Brown, Ad. 300.

(c) *The Memnon* (1889), 6 Asp. M. C. 488.

(b) *The Concordia v. The Esther*

(d) *The Flint* (1848), 6 Not. of Cas. 271.

Article 27. necessary, she was held in fault for a collision with the other steamship (e). The obligation on a ship which seeks to justify a departure from the regulations is heavy. She takes upon herself the obligation of showing both that the departure was necessary in order to avoid immediate danger, and also that the course adopted by her was reasonably calculated to avoid that danger (f).

Cases where
departure
from the
regulations
held not
justifiable.

The fact that a steam tug had a heavy ship in tow, and a strong wind and tide against her, was held not to justify her departing from the rule requiring her to keep out of the way of an approaching sailing ship (g). And where a large steamship of 1,356 tons had a disabled steamship of 1,495 tons in tow, and was fast to the latter by a tow rope and chain cables of such length that from the bow of the towing vessel to the stern of the other was nearly a quarter of a mile, it was held by the Privy Council that those circumstances did not justify a departure from the rule requiring steamships to keep out of the way of a sailing ship (h).

Two steamships on crossing courses, both making for a pilot cutter, must keep clear of each other by observing the regulations. The fact that they are both making for the cutter does not justify the steamship with the other on her starboard hand in neglecting to keep out of the way (i). In such circumstances, however, the other vessel, if it is apparent that she is approaching the cutter to pick up a pilot, may be excused under Art. 27 from the duty to keep her course and speed, providing any alteration in her course and speed was made in the ordinary course of navigation for the purpose of picking up the pilot (k).

A sailing ship beating to windward ahead of a steamship is justified by Art. 27 in going about when she has stood in towards a sand ahead of her as near as is prudent, although,

(e) *The Concordia* and *The Esther* (1866), L. R. 1 A. & E. 93.

(f) *The Agra* and *The Elizabeth Jenkins* (1866), L. R. 1 P. C. 501.

(g) *The Warrior* (1871), L. R. 3 A. & E. 553.

(h) *The American* and *The Syria* (1874), L. R. 4 A. & E. 226; on appeal, L. R. 6 P. C. 127.

(i) *The Ada v. The Sappho* (1872), 1 Asp. M. C. 475; affirmed

in the Privy Council by Gorell Barnes, P., in *The Albano* and *The Parisian*, (1907) App. Cas. 193.

(k) *The Roanoke*, (1908) P. 231. Though this case related to speed alone, it is submitted, in view of the observations of the learned judges in the Court of Appeal, that a like principle would apply to a change of course.

except for the danger of going ashore, it would be her duty to keep her course (l). Article 27.

It seems that Art. 27 does not justify a departure from the regulations on the ground that it was reasonable to expect that the force of the blow would thereby be diminished (m).

Where a collision may be avoided by obeying the regulations, it is not a sufficient excuse for departing from them that the collision might, with equal safety and more conveniently, have been avoided by one or both ships departing from the regulations. Thus, where a steamship sighted another at a considerable distance, approaching her nearly end on and a little on her starboard bow, it was held that the law required her to port, and that she was in fault for starboarding, although by porting she would have had to cross the bows of the other ship (n).

Convenience
no excuse for
departing
from the
regulations.

If a ship that is close-hauled must, in order to avoid a collision, either luff or bear up, it has been said that the more prudent course for her is to luff, if possible, "so as thereby to stop her way, and mitigate as far as possible the effects of a collision, if a collision should take place" (o).

A ship close-
hauled should
luff, if pos-
sible, rather
than bear up.

Although the steps which the regulations require two vessels approaching with risk of collision to take are not necessary, in the sense that a collision would certainly be avoided by only one of the vessels obeying the regulations, the law must be obeyed by both. A vessel departing from the regulations will not be excused on the ground that the collision would have been avoided if the other vessel had not disobeyed the law. In such a case Art. 27 is no justification for either ship in departing from the regulations. Thus, where two steamships were meeting end on, and a collision would not have occurred if either had put her helm to port,

Neither ship
may depart
from the
regulations
on the chance
of the other
obeying them.

(l) *The Orwell*, *supra*, p. 396.

(m) *The Khedive* (1880), 5 App. Cas. 876.

(n) *The Araxes* and *The Black Prince* (1861), 15 Moo. P. C. 122. This case was decided under the Act of 1854; it is submitted that the decision would have been the same under the existing regula-

tions. The observations in *The Arthur Gordon* (1860), Lush. 270, with regard to the duty of a sailing ship to keep out of the way of a tug and her tow upon grounds of convenience, must be taken with caution.

(o) *The Agra* and *The Elizabeth Jenkins* (1866), L. R. 1 P. C. 501.

Article 27.

both were held in fault by the Supreme Court of the United States (*p*).

Combined
operation of
Art. 27 and
Art. 28.

It still remains to be decided what effect Art. 27 has upon the application of Art. 28. The point has recently been discussed in the important case of *The Bellanoch* (*q*), but no decision thereon was ultimately found necessary. In the Court of first instance, Sir Gorell Barnes, P., inclined to the view that *The Bellanoch*, whose engines were from time to time going full speed astern in order to clear the mud from the propeller, but which was not herself moving astern through the water, was excused from blowing the signals required by Art. 28, inasmuch as they might have proved misleading to *The Canning*, which was approaching with a duty to keep out of the way. This view was very strongly dissented from by Fletcher Moulton, L. J. (*r*), in the Court of Appeal, who considered that Art. 27 "does not leave masters at liberty to consider to what extent they shall obey the regulations as to signals during a period of from five to twenty minutes before the collision, but only applies to cases in which, in the throes of danger, a departure from the strict observance of the rules is imperatively forced upon the master of a ship by the peril in which he is placed."

The learned Lord Justice further inclined to the view that Art. 27 has no application to Art. 28 at all, but that its operation is solely confined to the group of "Steering and Sailing Rules" (namely, Arts. 17 to 27), of which it forms the last.

In America, where a "whistling" rule similar to that of Art. 28 has been in force for many years, it has been held that a steamship signalling to another that she intends to depart from the regulations, and departing from them, is not in fault for such a departure if it was agreed to by the answering signal from the other ship. But strict proof was required that the assenting signal was given (*s*).

It would probably be held that where a ship is hailed by another to take a particular course, if she does so and a

(*p*) *The America*, 2 Otto, 432.
(*q*) (1907) P. 170; (1907) A. C.
269.

(*r*) (1907) P. 189, 190.
(*s*) *The Milwaukee*, 1 Brown,
Adm. 313.

collision occurs, the latter could not be heard to say that the former was wrong for departing from the regulations (t). Article 27.

Sound Signals for vessels in sight of one another.

ARTICLE 28.

The words "short blast" used in this Article shall mean a blast of about one second's duration. Article 28.
Helm signals.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, viz.:—

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern."

This Article is identical with Art. 28 of the Regulations of 1897 and corresponds with Art. 19 of 1884, but it differs from it in the important substitution of "shall" for "may," and in the omission of the declaration that the use of the signals is optional.

It may be noted that compliance with the rule is required where:

- (i) The vessels are in sight of one another.
- (ii) A steam vessel under way is taking a course.
- (iii) Such course is authorized or required by these rules.

"In sight" does not mean in sight at any distance, but "in sight with reference to the manœuvres which a vessel is authorized or required to take, having regard to the other vessel approaching, for the purpose of avoiding collision . . ." (u).

"Course" does not mean "course by compass, but the action of the vessel" (x). The word may apparently be used

(t) See above, p. 13, and cases there cited. (1907) A. C. 269.
(u) *Per Alverstone, C. J., The Bellanoch*, (1907) P. 170, at p. 181; (x) *Per Alverstone, C. J., ibid.* at p. 182; cf. *The Anselm*, (1907) P. 151.

Article 28. equally in regard to the management of a vessel's helm and to that of her engines.

A tug under slight starboard helm in order to counteract the effect of the tide was held to have "taken a course" when she further starboarded her helm in order to pass under the stern of another vessel (*y*).

A vessel, which was dragging over mud and was from time to time putting her engines full speed astern to clear her propeller without herself moving astern through the water, was deemed by a majority of the Court of Appeal not to have taken a "course" (*z*). Similarly, where the helm of a vessel was put hard-a-port, when her engines were reversed, not to send her head to starboard, but to check the reverse action of the engines, it was held she was not to blame for not having signalled this alteration of her helm (*a*).

Possibly it is unnecessary that in order to constitute "taking a course" there should be any alteration at all in helm or engines. Persistence in a course originally taken for the ordinary purposes of navigation might amount to "taking a course" within the Article (*b*). Thus where in foggy weather a vessel starboarded for a vessel at anchor, and while she was under starboard helm another moving vessel came into sight, it was held that she was not obliged to signal her alteration of course for the anchored vessel, but should have indicated to the other vessel, when she came into sight, that her course was being directed to port (*c*).

"Authorized or required."

The words "authorized or required" have given rise to difficulty. They were judicially interpreted by Sir Francis Jeune, P., in *The Uskmoor* (*d*), and his interpretation was approved in the Court of Appeal in *The Anselm* (*e*) and *The Aristocrat* (*f*). "It has been sought to put a rather narrow interpretation on the rule. Of course the word 'required' is clear enough. There are certain things required by the

(*y*) *The Aristocrat*, (1908) P. 9; but see *The Colgarth*, Ship. Gaz. Nov. 3rd, 1906.

(*z*) *The Bellanoch*, *supra*.

(*a*) *The Aberdonian*, (1910) P. 225.

(*b*) *The Aristocrat*, *supra*, at p. 21; *aliter*, where course is persisted in without reference to the

other ship; cf. *The Mournie*, (1901) P. 68.

(*c*) *The Megantic* (1914), 31 T. L. R. 190.

(*d*) *The Uskmoor*, (1902) P. 250, at p. 253.

(*e*) (1907) P. 151.

(*f*) (1908) P. 9.

rules to be done. The word 'authorized' is, however, very much larger, and I am inclined to think that a large interpretation ought to be given to it, and that it includes any course which, for the safety of the vessels, good seamanship requires to be taken with reference to the other vessel then in sight" (g). This definition, it may be observed, covers every course which "good seamanship" requires. It was contended in *The Anselm* that Art. 28 did not apply where a vessel was taking a course under Art. 27 or 29. It was decided, however, that, although a vessel might be acting under Art. 27 or 29, a breach of which Article probably did not carry the statutory penalty (h), yet failure to indicate such action by whistle signal would involve a breach of Art. 28, and that the statutory penalty would attach to such breach. In *The Hero* (i) the Article was held to apply to any course taken by a vessel purporting to act under any of the rules with the intention of avoiding immediate danger.

In the case of *The Bellanoch* (k) the question arose, whether *The Bellanoch*, which was crossing the mud at the entrance to Monte Video harbour, and which was from time to time putting her engines full speed astern to clear her propeller, the last occasion being for the first three of the eight minutes preceding the collision, was obliged to sound her whistle to indicate that her engines were working full speed astern, to *The Canning*, a vessel which was proceeding down a dredged channel on a course nearly at right angles to that of *The Bellanoch*, and which had *The Bellanoch* on her starboard bow.

A majority of the Court of Appeal held that the engines of *The Bellanoch* were being put astern in the ordinary course of navigation, and that *The Bellanoch* was not taking a course with reference to *The Canning*; a finding which clearly distinguished the case from *The Anselm*. A decision of these points was, however, rendered unnecessary to the conclusions both of the Court of Appeal and of the House of

(g) *The Uskmoor*, *supra*.

(h) *The Sans Pareil*, (1900) P. 267.

(i) (1911) P. 128, reversed on another point, (1912) App. Cas. 300. Cp., however, *The Tempus*,

(1913) P. 166, where the keep-on vessel was held not to blame for having failed to signal a course taken at the last moment in the hope of avoiding collision.

(k) (1907) P. 170.

Article 28.

Lords, since both those tribunals found that at the time when *The Bellanoch's* engines were put full speed astern, the relation of the vessels was not such as to make the Collision Regulations applicable, and further, that if *The Bellanoch* was guilty of any breach of duty in failing to sound, such breach could not by any possibility have contributed to the collision (*l*).

When signals
should be
sounded.

Care must be taken not to sound misleading signals. A vessel in tow with no steam in her main engines was proceeding up a river and was about to turn when she was run into by another vessel. Her tug was sounding the regulation towing signal under Art. 15, but no other whistle signals were given. It was held that it would have been wrong for her or her tug to have given a turning signal, for, though preparing to turn, they had not commenced, and that she was right in giving no towing signal, because to have done so would have misled other vessels into thinking she had steam in her main engines (*m*).

American
rule.

It has been held in America, where a similar rule has long been in force, that a steamship cannot by her whistle dictate to another a departure from the regulations (*n*). The American rules require an answering signal to be given. If after an exchange of signals either vessel departs from her agreed course she is held in fault (*o*). The signals must not be used by a ship at anchor (*p*), nor, as it would seem, under any circumstances other than those mentioned in Art. 28.

No vessel, under any circumstances, to neglect proper precautions.

ARTICLE 29.**Article 29.**

Nothing in these rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of

Proper pre-
cautions are

(*l*)^{*} This must be taken to be the effect of the decision, see *The Corinthian*, (1909) P. 260.

(*m*) *The Marmion* (1913), 29 T. L. R. 646.

(*n*) *The Milwaukee*, Brown, Ad. 313.

(*o*) *The St. John's*, 42 Fed. Rep. 75.

(*p*) *The Maling*, 110 Fed. Rep. 227.

any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. Article 29.
to be taken
in all cases.

This Article is identical with Art. 29 of the Regulations of 1897, and with Art. 24 of 1884, and has been inserted substantially unaltered in all regulations since 1863. It seems difficult to attribute to it any legal effect. It was inserted in the regulations, probably *ex abundante cautela*, and as a declaration, not to be overlooked by seamen, of the legal consequences of negligence.

The duty of those in charge of a ship to navigate her with due regard to the ordinary rules of seamanship, and under special circumstances to depart from the regulations, has been already referred to (*q*). What is required of seamen is ordinary skill and ordinary intelligence; they are not expected to foresee and provide against every accident. But where literal compliance with the regulations is not enough to avoid a collision, all must be done that a seaman of ordinary skill and intelligence would do to keep clear of the other ship (*r*). Where, for example, an alteration of the helm is not enough, the helm must be assisted by lowering the peak or letting go the foresheets (*s*). So, a vessel has been held in fault for not backing her yards (*t*). Precautions
required by
the ordinary
practice of
seamen.

The law as to what is proper care and skill in navigation and what are precautions required by the ordinary practice of seamen, is illustrated by numerous decisions, some of which are here collected.

First, as to look-out: If a ship is proved to have been negligent in not keeping a proper look-out she will be held answerable for all the reasonable consequences of her negligence. Though the other ship has no lights, it is negligence not to see and avoid her on a clear night (*u*); but if the Look-out.

(*q*) See pp. 432, *seq.*, above.

(*r*) *The Jesmond and The Earl of Elgin* (1872), L. R. 4 P. C. 1; *The City of Antwerp and The Friedrich, Inman v. Beck* (1869), L. R. 2 P. C. 25.

(*s*) *The Lady Anne* (1851), 15 Jur. 18; *The Stranger* (1848), 6

Not. of Cas. 36, 38; *The Marpesia* (1872), L. R. 4 P. C. 212; *The Ulster* (1862), 1 Moo. P. C. N. S. 31; *The Zadoh* (1884), 9 P. D. 114, 117.

(*t*) *The James* (1857), Swab. 55.

(*u*) *The Viola*, 59 Fed. Rep. 632.

Article 29. absence of look-out clearly had nothing to do with the collision, it will not be deemed to be a fault contributing to the collision (*x*).

The look-out must be vigilant and sufficient according to the exigencies of the case. The denser the fog and the worse the weather the greater the cause for vigilance. A ship cannot be heard to say that a look-out was of no use because the weather was so thick that another ship could not be seen until actually in collision. In *The Mellona* (*y*), Dr. Lushington said:—"It is no excuse to urge that from the intensity of the darkness no vigilance, however great, could have enabled *The Mellona* to have descried *The George* in time to avoid a collision. In proportion to the greatness of the necessity, the greater ought to have been the care and vigilance employed."

In ordinary cases one or more hands should be specially stationed on the look-out by day as well as at night. They should not be engaged upon any other duty; and they should be stationed in the bows, or in that part of the ship from which other vessels can best be seen (*z*). On board a Mersey ferry-boat the proper place for the look-out was said to be on the bridge between the paddle-boxes (*a*). When passing over a fishing ground a specially vigilant look-out must be kept to avoid fishing-boats (*b*). For a large steamship going eleven knots off Dungeness, a crowded part of the English Channel, on a hazy night, the Privy Council considered that one hand on the look-out was not sufficient (*c*). A vessel brought up in a frequented channel (*d*) should have an anchor watch ready to sheer her clear of an approaching vessel, or to give

Anchor
watch.

(*x*) *The Dexter*, 23 Wall. 69; *The Farragut*, 10 Wall. 337; *The Clarion*, 27 Fed. Rep. 128; *The George Murray*, 22 Fed. Rep. 117.

(*y*) (1847), 3 W. Rob. 7, 13.

(*z*) *The Diana* (1840), 1 W. Rob. 131; 4 Moo. P. C. 11; *The Batavier* (1854), 9 Moo. P. C. 286; *The Bold Buccleuch* (1853), 1 Pr. Adm. Dig. 144; *The Glannibanta* (1876), 1 P. D. 283; *The Belgenland*, 7 Davis, 355. See *The Morning Light*, 2 Wall. 550.

(*a*) *The Wirral* (1849), 3 W. Rob. 56.

(*b*) *The Robert and Ann v. The Lloyds* (1864), Holt, 55.

(*c*) *The Germania* (1868), 21 L. T. 44. In an appeal from a

judgment of a Court of Enquiry, suspending a master's certificate for not having set two men on the look-out when running through a roadstead, the judges of the Admiralty Division said that there was nothing in the circumstances of the case to require more than one man on the look-out; and they reversed the decision of the Court of Enquiry. *The Mary and The Rowland*, Adm. Ct., 11th July, 1881; cited in Murton's Wreck Enquiries, p. 196.

(*d*) But not, it seems, elsewhere: *The M. J. McCaldin*, 35 Fed. Rep. 330; *The Erastus Corning*, 25 Fed. Rep. 572.

her chain (*e*). It was held negligence that an anchor watch was not kept on board a ship at moorings in the river Tyne, the weather being bad and threatening (*f*). On board a steamship in daylight in the Clyde, the pilot, an officer, and a hand (not properly qualified for the duty) were held to be a sufficient look-out (*g*). Article 29.

The necessity in the Thames of a look-out on the fore-castle head, to see craft low in the water under the ship's bows, was insisted upon in *The Hallett* (*h*). In crowded waters the look-out cannot report every light he sees, but must report every material light as soon as it becomes material (*i*). In crowded waters.

Under the Regulations of 1863 it was held that a vessel was not necessarily in fault for not keeping a look-out astern on a clear night; although if she sees a vessel approaching her astern it is her duty to warn her of her danger (*k*). In America a vessel which damaged another by moving her propeller in dock was held in fault for not having a look-out astern (*l*); but it was held to be no negligence for a small "stern-wheeler" not to have a look-out astern, having regard to the practice in New York harbour and the scanty crew carried by such boats (*m*). Under the existing regulations a look-out astern must be kept in order to comply with Art. 10 as to showing a flare or stern light to an overtaking vessel. Look-out astern.

It is the duty of a ship with another in tow to keep an especially vigilant look-out, because the tow cannot always see ahead (*n*). On the other hand, the fact that she is in tow will not excuse a vessel from keeping an adequate look-out,

(*e*) See *Lack v. Seward* (1830), 4 Car. & P. 106; *Vanderplank v. Miller* (1828), M. & M. 169; and *The Richmond* and *The E. Heipershausen*, 63 Fed. Rep. 1020; *The Guyandotte*, 39 Fed. Rep. 575; *The Altenower*, *ibid.* 118; *The Ogema*, 32 Fed. Rep. 919; *The Erastus Corning*, 25 Fed. Rep. 572; *The Oliver*, 22 Fed. Rep. 848; *The Rigaud*, 11 Quebec L. R. 382; *The Masters* and *The Raynor*, Brown, Adm. 342; *The Marcia Tribou*, 2 Sprague, 17.

(*f*) *The Pladda* (1876), 2 P. D. 34. As to the need for a watchman when fast to the shore, see *infra*, p. 458. See also *The Thetis*, Ship.

Gaz., June 23rd, 1906, and Mar. 15th, 1907.

(*g*) *Clyde Navigation Co. v. Barclay* (1876), 1 App. Cas. 790, 798.

(*h*) Ad. Div. 9th August, 1887.

(*i*) *The Shakkeborg* (1911); reported in note to *The Umsinga*, (1911) P. at p. 245.

(*k*) *The Earl Spencer* (1874), L. R. 4 A. & E. 431; *The City of Brooklyn* (1876), 1 P. D. 276; *Kennedy v. The Sarmatian*, 2 Fed. Rep. 911.

(*l*) *The Nevada*, 16 Otto, 154.

(*m*) *McFarland v. Selby Smelting and Lead Co.*, 17 Fed. Rep. 253.

(*n*) *The Jane Bacon* (1879), 27 W. R. 35.

Article 29.

and a pilot vessel made fast to a sailing ship, which was being towed down the Bristol Channel, has been held in fault for failing in this respect (*o*).

The obligation of keeping a sharper look-out than is ordinarily required by law may be cast upon a ship by a local rule of navigation. In the Thames, for example, a local rule of navigation requires a vessel, before rounding certain points, to ascertain whether there is any vessel approaching her in the opposite direction on the other side of the point (*p*).

Where a vessel in a river ran into another coming out of dock, it was held that the duty of the look-out was to see that the channel was clear; and that it was not negligence on his part not to have reported the vessel coming out of dock (*q*).

Where to keep a good look-out glasses are necessary, it would probably be held negligence not to use them (*r*). In an American case the use of a night-glass on board a steamer coming into harbour was held to be necessary (*s*).

Whether it is negligence to leave craft moored to the shore or other barges in dock or in tidal waters without a watchman depends on the danger to be anticipated, having regard to the position of the barge (*t*). Evidence that, had there been a man left in charge, he could in fact have taken steps to avert collision is not conclusive in such cases. In determining the danger to the barge, if any, to be anticipated from leaving her unattended, evidence as to the local custom in the matter is relevant, the test in such cases being whether in the circumstances such conduct was reasonable (*u*).

The requirements of the law in America as to look-out have been stated in many cases in stringent terms. In *The Sunnyside* (*x*) the Supreme Court held that it is the duty of

Watchman
for ship
moored to
shore.

American
cases as to
look-out.

(*o*) *The Harvest Home*, (1905) P. 177.

(*p*) *The Margaret* (1884), 9 App. Cas. 873, 879.

(*q*) *The Calabar* (1868), L. R. 2 P. C. 238.

(*r*) See *The Hibernia* (1874), 2 Asp. M. C. 454.

(*s*) *The Ville du Havre*, 7 Bened. 328; but see *The Avon*, 22 Fed. Rep. 905.

(*t*) *The Western Belle* (1906), 10 Asp. M. C. 279; cf. *The Scotia* (1890), 6 Asp. M. C. 541; *The Dunstanborough*, (1892) P. 263; *The Hornet*, (1892) P. 361; *The*

St. Aubin, (1907) P. 60. In America it appears to be the practice in New York harbour to leave small craft in the slips unattended; and it has been held that there is no negligence in doing so: *Campbell v. Pennsylvania Rail. Co.*, 85 Fed. Rep. 462.

(*u*) *Sharpsburg Sand Co. v. Monongahela River Consolidated Coal and Coke Co.*, 145 Fed. 424.

(*x*) 1 Otto, 208; followed in *The General*, 82 Fed. Rep. 830. Cf. *The Manitoba* (a case of two steamships), 15 Davis, 97.

a sailing ship to watch the movements of an approaching steamship, in order that, if the steamship fails to comply with the law and keep out of the way, she may herself be able to avoid a collision. Article 29.

In another case it was held that the absence of a look-out on board a vessel will cause her to be held in fault for a collision, unless it is proved that the other ship was seen as soon as it was possible to see her, and that the proper steps to avoid her were taken, and as soon as it was possible to take them (*y*).

The Supreme Court of the United States has held that the officer in charge of the deck is not a sufficient look-out: that for a first-class ocean steamship two men with no other duty to perform constitute a proper look-out, and that they should be stationed forward in the ship's bows (*z*), or in the part of the ship from which other vessels can best be seen (*a*). These, however, are questions of proper nautical management, and it would be dangerous to rely too much on decisions which depend so largely on particular circumstances. The rule that there must be one or more men specially stationed on the look-out, and that the officer in charge or the man at the wheel is not sufficient, has been established by numerous cases (*b*).

In *The Ariadne* (*c*) the Supreme Court said that the rigour of the requirement as to an efficient look-out rises according to the speed and power of the vessel and the chance of meeting other ships. Thus, a vessel entering a harbour at night should have all the crew on deck, and keep as sharp a look-out as is possible (*d*).

It has been held by the Supreme Court that the absence of a look-out was not excused by the fact that it was day-time and all hands were engaged in reefing (*e*); or that they were repairing damage caused by an accident (*f*).

(*y*) *The Atlas*, 10 Blatchf. 459.

(*z*) *Chamberlain v. Ward*, 21 How. 548, 570.

(*a*) *The Morning Light*, 2 Wall. 550.

(*b*) *The Northern Indiana*, 3 Blatchf. 92; *The Comet*, 9 Blatchf. 323; *The Parkersburg*, 5 Blatchf. 247; *The Douglass*, Brown, Ad. 105; *The Nabob*, *ibid.* 115; *The*

Blossom, Olcott, 188.

(*c*) 13 Wall. 475.

(*d*) *The Scioto*, Davies, 359.

(*e*) *Catharine v. Dickinson*, 17 How. 170; *Thorp v. Hammond*, 12 Wall. 408. See also *The H. P. Baldwin*, Brown, Ad. 300.

(*f*) *Whitridge v. Dill*, 23 How. 448.

Article 29. The duty of ferry-boats, and of vessels crossing the track of ferry-boats, to keep a specially good look-out has been insisted upon in many cases (*g*).

Sufficiency of the crew.

Where the absence of a look-out in no way contributed to the collision, the ship will not be held in fault merely because there was no look-out (*h*). But *aliter* where, notwithstanding fault in the other ship (carrying away of tiller rope), the collision might have been avoided by a better look-out (*i*).

A vessel under way must have on board a sufficient crew to work her for the voyage on which she is engaged. The crew that is usual under the particular circumstances will be held to be sufficient. Thus, two hands have been held sufficient for a sailing barge in the Thames (*k*). When in dock or harbour she should be provided with sufficient hands to tend her, having regard to her position, the character of the dock or harbour, and to ordinary changes of the weather (*l*). A steamer having been found to blame for damaging with her propeller a barge that was properly moored astern of her, the barge was held also to blame for having no one on board: but for this omission, the collision might, perhaps, have been avoided, and the barge might, at any rate, have been beached, and the damage diminished (*m*). In *The Hornet* (*n*), a somewhat similar case, the collision was in Tilbury (non-tidal) dock, and the barge, which was run into and sunk by a tug, was held to be free from blame, though no one was on board her at the time of the collision. The question to be answered in such case is, whether, having regard to the position of the barge, the danger to be anticipated to the barge in leaving her unattended is so slight as to justify her being so left (*o*). Where a new ship was in collision on her trial trip, when she had not on board her full complement of officers and crew, she was not therefore held

(*g*) *The America*, 10 Blatchf. 155; *Ince v. East Boston Ferry Co.*, 106 Mass. Rep. 149.

(*h*) *The Fannie*, 11 Wall. 238; *The Havana*, 54 Fed. Rep. 411.

(*i*) *The Riversdale*, 53 Fed. Rep. 286.

(*k*) *The Minna* (1868), L. R. 2 A. & E. 97: The number of hands to be carried by lighters in the Thames is prescribed by River

Bye-law 61 of 1914, *infra*, p. 545.

(*l*) *The Excelsior* (1868), L. R. 2 A. & E. 268; *The Patriotto* and *The Rival* (1860), 2 L. T. 301.

(*m*) *The Scotia* (1890), 6 Asp. M. C. 541; *The Dunstanborough*, (1892) P. 363, note.

(*n*) (1892) P. 361.

(*o*) *The Western Belle* (1906), 10 Asp. M. C. 279.

Article 29.

in fault, there being on board a sufficient crew to work her (*p*). It is negligence for the officer of a ship at moorings in a river to be ashore unnecessarily when the weather is bad and threatening (*q*). The officer in charge should be always on deck; he should not leave the deck in charge of a junior officer when another vessel is approaching, so as to involve risk of collision (*r*);⁷ but it has been held in America that it is not negligence for the officer in charge of the deck, being a competent man, not to call the master when another ship is approaching with risk of collision (*s*). Nevertheless, in urgent cases it is prudent to do so. In the case of a collision between sailing smacks, it being admitted that one of them was in fault, the other was held to be also in fault for not having more than one hand on deck, whereby the collision might have been avoided; this decision, however, was reversed on appeal, and the reversal was upheld (*t*). In a fog there should be strength at the helm sufficient to alter the ship's course as quickly as possible on the order being given (*u*).

A vessel under way is bound to keep clear of another at anchor. The rule seems to be the same in all cases where one of the ships is under way and the other, though not at anchor, is for any other reason unable to keep out of the way; as where she is fishing and fast to her nets, or in stays, or disabled (*x*). And it applies though the ship at anchor is brought up in the fairway, or elsewhere in an improper berth. "It is the bounden duty of a vessel under way, whether the vessel at anchor be properly or improperly anchored, to avoid, if it be possible with safety to herself, any collision whatever" (*y*). If one ship properly lighted (if at night) is fast to the shore, or lying at established moorings, it can scarcely happen that the other would not be held in fault for the collision (*z*). But under such circum-

Keeping
clear of ship
at anchor.

(*p*) *The Clyde Navigation Co. v. Barclay* (1876), 1 App. Cas. 790.

(*q*) *The Kepler* (1875), 2 P. D. 40.

(*r*) *The Arthur Gordon and The Independence* (1860), Lush. 270; *The Khedive and The Voorwaarts* (1880), 5 App. Cas. 876.

(*s*) *The Maverick*, 75 Fed. Rep. 845.

(*t*) *The General Gordon* (1892),

7 Asp. M. C. 317.

(*u*) *The Europa* (1850), 14 Jur. 627.

(*x*) See above, p. 42.

(*y*) Per Dr. Lushington in *The Batavier* (1845), 2 W. Rob. 407; and see *The Dura* (1853), 1 Pritch. Adm. Dig. 174; *The Marcia Tribou*, 2 Sprague, 17; but see *The Kjobenhavn* (1874), 2 Asp. M. C. 213.

(*z*) See *The Secret* (1872), 1 Asp.

Article 29. stances she must not be allowed to sheer with her head or stern into the navigable channel (a). Where a steamship in the daytime ran into a sailing ship brought up in a river 500 yards wide, it was held by an American Court that the steamship was solely in fault, although the sailing ship was riding with her sails up, sheering about, and with no anchor watch (b).

A vessel hove-to has not the privileges of a ship at anchor. She is under way, and in case of risk of collision must comply with the regulations so far as she is able to do so. She must not rely upon the other ship keeping out of her way (c).

Ship at anchor, bringing up, or getting under way.

The following cases illustrate the requirements of the law as to the duty of a ship when coming to an anchor, when brought up, and when getting under way:—

Foul berth.

A ship in bringing up must not give another a foul berth. "If one vessel anchors there, and another here, there should be that space left for swinging to the anchor that in ordinary circumstances the two vessels cannot come together. If that space is not left, I apprehend it is a foul berth" (d). In an American case it was held that a ship at anchor is entitled to have room to swing, not only with the scope of cable which she has out at the time when the other ship takes up her berth, but with as long a scope as may be necessary to enable her to ride in safety (e).

If a ship gives another a foul berth she cannot require the latter to take extraordinary precautions to avoid a collision (f). It has been held that in the Mersey a cable's length between the two ships is a clear berth (g). This, however, cannot be laid down as a general rule, for at this distance a laden vessel riding to the tide might, in swinging, come dangerously close to a light vessel riding athwart the tide. And not only must a vessel not bring up so close to another

M. C. 318; and *Culbertson v. Shaw*, 18 How. 584; *Portevant v. The Bella Donna*, Newb. Adm. 510; *The Bridgeport*, 7 Blatchf. 361; 14 Wall. 116; *The Granite State*, 3 Wall. 310; *The Helen Cooper* and *The R. L. Mabey*, 7 Blatchf. 378.
(a) *The St. Lawrence*, 19 Fed. Rep. 328.

(b) *The Planet*, Brown, Adm. 124.

(c) *Supra*, pp. 313, 372.

(d) *Per Dr. Lushington* in *The Northampton* (1853), 1 Spinks, 152, 160.

(e) *The Queen of the East* and *The Calypso*, 4 Bened. 103.

(f) *The Vivid* (1872), 1 Asp. M. C. 601; *The Meanachy*, (1897) App. Cas. 351.

(g) *The Princeton* (1878), 3 P. D. 90.

Article 29.

as not to give her room to swing, but she must not bring up in such a place that she endangers the other ship. She should not bring up directly ahead, or in the stream of another ship, having regard to the current and also to prevailing winds. If she brings up directly in the hawse of another ship, or elsewhere in the neighbourhood of another ship, there should be such a distance between them that if either of them drives or parts from her anchors she may have the opportunity to keep clear (*h*). Where a ship, in bad weather, took up a berth two cables' length to windward of another, in an anchorage where there was plenty of room, and then rode with only one anchor down and that not her best, she was held in fault for a collision with the ship to leeward, against which she was driven when her cable parted in a heavy squall (*i*). Where a vessel gave another a foul berth, and subsequently drove against her in a hurricane, it was held to be an inevitable accident (*k*).

If a vessel takes up a berth alongside another where she takes the ground and falls over and injures the other, she will be held in fault (*l*). A vessel voluntarily taking up such a berth in a dock does so at her own risk (*m*). So where two colliers were beached near each other for the purpose of discharging cargo, it was held that it was the duty of the last comer to moor head and stern, and in such a way as not to foul the other when the wind shifted (*n*).

In coming to an anchor caution must be used not to injure or embarrass other ships. A vessel rounding-to, so as to bring her head upon tide, should, before altering her helm, look round and see that all is clear, and that her manœuvre will not endanger other ships (*o*). The omission to warn a ship astern of her intention to bring up has been held

Coming to
an anchor.

(*h*) *The Cumberland* (Vice-Ad. Court, Lower Canada), Stuart's Rep. (1858), p. 75; *The Egyptian* (1862), 1 Moo. P. C. N. S. 373.

(*i*) *The Volcano* (1844), 2 W. Rob. 337; *The Maggie Armstrong* and *The Blue Bell* (1866), 14 L. T. 340.

(*k*) *The Innisfail* and *The Secret* (1877), 35 L. T. 819.

(*l*) *The Indian* and *The Jessie* (1865), 12 L. T. 586; *The George* and *The Lidskjalf* (1857), Swab.

117; *The America*, 38 Fed. Rep. 256; *The Addie Schlaefel*, 37 Fed. Rep. 382; *The Behera*, 6 Fed. Rep. 400.

(*m*) *The Patriotto* and *The Rival* (1860), 2 L. T. 301.

(*n*) *The Vivid* (1872), 1 Asp. M. C. 601.

(*o*) *The Ceres* (1857), Swab. 250; *The Shannon* (1842), 1 W. Rob. 463; *The Philotaxe* (1878), 37 L. T. 540.

Article 29. neglect of a "precaution required by the special circumstances of the case" (*p*).

A ship, having lost one anchor off Dungeness, in attempting to bring up in the Downs lost her second anchor, and drove foul of another vessel. It was held that, the weather being heavy, she was in fault for attempting, with only one anchor, to bring up ahead of another vessel without the assistance of a tug which she might have taken (*q*).

In coming to an anchor in a crowded roadstead or harbour, proper care must be used to shorten sail in time, and not to run in at too great speed. A vessel running into Stangate Creek, in the Medway, was held in fault for a collision caused by her running in under too great a press of sail (*r*).

Where a ship delayed taking up her berth, until night, and in consequence of the darkness injured another, she was held in fault for not having brought up by daylight, when she might have done so in safety (*s*).

Where, in Hong Kong harbour, a collision might have been avoided if the starboard anchor had been let go, and it could not be let go because it was unshackled, it was held to be negligence not to have had the anchor ready (*t*).

By Art. 14 of the Convention contained in the first schedule to the Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), it is illegal for a fishing boat to bring up between sunset and sunrise on ground where drift-net fishing is actually going on. This Article applies only in the waters and to the vessels mentioned in the Act.

Precautions
to be taken
when at
anchor.

After coming to an anchor, those on board must show proper skill and seamanship in keeping their vessel from driving and endangering other craft. If a ship parts from her anchor, when with proper care she might have ridden in safety, and drives against another vessel, the collision will be held to have been caused by the negligence of the former, although after parting from her anchor the collision was

(*p*) *The Philotaxe* (1874), 2 Asp. M. C. 512; and see *The Queen Victoria* (1891), 7 Asp. M. C. 9; *The Helen Keller*, 50 Fed. Rep. 142.

(*q*) *The Annot Lyle* (1886), 6 Asp. M. C. 50.

(*r*) *The Neptune the Second* (1812), 1 Dod. 467; *The Secret*

(1872), 1 Asp. M. C. 318; *The Earl Spencer* (1874), L. R. 4 A. & E. 431; *The Masten*, Brown, Ad. 436.

(*s*) *The Egyptian* (1862), 1 Moo. P. C. N. S. 373.

(*t*) *The City of Peking* (1888), 14 App. Cas. 40.

Article 29.

inevitable, and all was done that could be done to avoid it. If she drives from her anchor in consequence of her yards not having been sent down, or because she was not tended or made properly snug, she will be held in fault (*u*). Where it is customary and prudent to moor, a vessel neglecting to do so will be held in fault (*x*); a foul anchor will not excuse her (*y*). The duty to keep an anchor watch has been already referred to (*z*). If a vessel at anchor can avoid a collision by the use of her helm, she will be held in fault if, having the opportunity to do so, she does not sheer clear (*a*); but the proof must be clear that the sheer would have avoided the collision (*b*).

If a ship drives from her anchor or parts her chain, and a collision may be avoided by employing a tug which is available, it is negligence not to employ her (*c*).

Where a ship gave another a foul berth in the Downs, and drove against her in a gale of wind while riding at single anchor with forty-five fathoms of chain, it was held that, although the other vessel drove also, she was herself solely to blame (*d*).

Insufficient ground tackle, or riding by a single anchor when there should have been two down, or failure to drop a second anchor when driving (*e*), will make a ship liable for a collision so caused (*f*). A tug in charge of an unwieldy tow of ear floats in New York harbour was overpowered by her tow in a heavy squall, and, having let go her anchor, which did not hold, she drove against a third ship. It was held that she was in fault for not having an anchor that would hold her (*g*). The ship must be duly tended while

(*u*) *The Excelsior* (1868), L. R. 2 A. & E. 268; *The Christiana* (1850), 7 Moo. P. C. 160.

(*x*) *The Gipsy King* (1847), 2 W. Rob. 537.

(*y*) *Hastorf v. Mayor, &c., City of New York*, 64 Fed. Rep. 869.

(*z*) *Supra*, p. 454.

(*a*) See *supra*, p. 44.

(*b*) *The Howard B. Peck*, 48 Fed. Rep. 334.

(*c*) *The Arran*, 9 Quebec L. R. 278; and see *The Annot Lyle*, p. 462, *supra*.

(*d*) *The Maggie Armstrong v.*

The Blue Bell (1866), 14 L. T. 340.

(*e*) *The Jessie and The Zaanland*, (1917) P. 108; *The Mary Fraser*, 26 Fed. Rep. 872.

(*f*) *The Massachusetts* (1840), 1 W. Rob. 371; *The Despatch* (1860), 14 Moo. P. C. 83; *The Volcano* (1844), 2 W. Rob. 337. And see *The William Lindsay* (1873), L. R. 5 P. C. 338; *Allen v. Quebec Warehouse Co.* (1886), 12 App. Cas. 101.

(*g*) *The J. H. Rutter*, 35 Fed. Rep. 365.

Article 29.

at anchor. A ship which goes foul of another through improperly breaking her sheer will be held in fault (*h*). Where a ship was riding in an open and crowded roadstead in blowing weather, without having sent down her top-gallant and main-royal yards, she was held in fault for a collision caused by her driving (*i*). If a ship in a dock or harbour subject to the Harbours, Docks, and Piers Clauses Act, 1847, is insufficiently moored, after notice from the harbour-master to provide proper fasts, she incurs a penalty of 10*l*. (*k*). It has been held negligence not to increase moorings where the state of the weather required it (*l*).

It was held in America that a vessel in a gale of wind, with another brought up near her, was in fault for not taking timely precautions for avoiding a collision caused by the other driving on her (*m*). In another American case (*n*) it was held that where a ship at anchor drives and comes into collision with another at anchor, the burden is on the former, alleging inevitable accident, to prove that she had a proper watch on deck, that she discovered the dragging at once, that she took proper measures to prevent it, and that her ground tackle was sufficient.

A vessel that, by dragging her anchors, gives another a foul berth, cannot require the latter to shift. She must herself get under way (*o*), or slip. It will be no excuse that her cables were shackled so that she could not slip (*p*).

If a ship is brought up by her own people, or by a compulsory pilot, in an improper berth, so as to endanger other ships, she must be shifted and taken to a proper berth as soon as possible (*q*). Where a ship was compelled to shift her berth in bad weather, owing to her having only one anchor down, and in doing so, although proper precautions were taken, she came into collision, it was held that she was in

(*h*) See *The Peerless* (1860), Lush. 30.

(*i*) *The Christiana* (1850), 7 Moo. P. C. 460; and see *The Ruby Queen* (1860), Lush. 266; *The Excelsior* (1867), L. R. 2 A. & E. 268.

(*k*) 10 & 11 Vict. c. 27, s. 61.

(*l*) *The John Harley* and *The William Tell* (1866), 13 L. T. 413;

The Louisiana, 3 Wall. 164.

(*m*) *The Sapphire*, 11 Wall. 164.

(*n*) *The Dutchess*, 6 Bened. 48.

(*o*) *The Wallace*, 41 Fed. Rep. 894.

(*p*) *The Gevalia*, 39 Fed. Rep. 47.

(*q*) *The Woburn Abbey* (1869), 20 L. T. 621.

fault for the collision, because of her original neglect in riding to a single anchor (*r*).

A ship in New York harbour was lying at a wharf with her stern projecting into the slip of a ferry-boat. She was warned of her danger and did not shift. It was held that the ferry-boat was not in fault for a collision which followed, the ferry-boat having done her best to avoid it (*s*). In another case, a ship moored to a wharf so that her bows projected into a fairway, narrowing it but not so as to prevent other ships using it. Another ship subsequently moored to the opposite wharf, so as to block the fairway. A third ship attempted to enter and fouled the first ship. It was held that the first ship ought to have shifted her berth after the second ship made fast to the wharf, and that she and the third ship were both in fault (*t*).

It was held negligence in a ship in threatening weather to ride to a buoy in the river Tyne, with her chain cables unbent and with no anchor ready to let go in case of parting from the buoy. Even in such situations, if the weather is threatening, or there is cause for special precautions, an anchor watch must be kept and hands enough must remain on board to tend the ship (*u*).

As a general rule, a ship cannot take up or keep a berth by mooring to a buoy at a particular spot. It has been suggested that in particular localities there may be a custom enabling her to do so (*x*). *See qu.*

The parting of a cable, the giving way of a buoy to which the ship was moored, and the jamming of the cable on the windlass on letting go the anchor, have been held to be inevitable accidents (*y*).

Making fast to another vessel, instead of to the shore, has

(*r*) *The Despatch* (1860), 3 L. T. 219; 14 Moo. P. C. 83.

(*s*) *The City of Lynn*, 11 Fed. Rep. 339.

(*t*) *The Margaret J. Sanford*, 37 Fed. Rep. 148; *The Mary Powell*, 36 Fed. Rep. 598.

(*u*) *The Pladda* (1876), 2 P. D.

34; *The Kepler* (1875), 2 P. D. 40. As to the duty to have chains bent, see *The City of Peking* (1885), 14 App. Cas. 40.

(*x*) *The Vivid* (1872), 1 Asp. M. C. 601.

(*y*) See *supra*, pp. 21, 44.

Article 29.

been held to be negligence (*z*); and a vessel that did so has been held liable for damage caused by both going adrift (*a*).

Where a ship, A., was made fast to another, B., and B., in getting under way, injured A., it was held in America that B. was in fault, although the accident might have been caused partly by the lines by which A. was made fast to B., and which A. had not let go when desired to do so by B. It was held to be negligence in B. to have got under way without seeing that the lines were let go (*b*). And so, in England, a steamer was held in fault for injuring, by the movement of her propeller, a barge that was properly moored astern of her (*c*).

By direction of a wharfinger a lighter was made fast to the wharf at a particular berth, and, in order to make room for her, a schooner was ordered to shift. The lines by which the lighter was made fast were slacked by the surging caused by a passing steamer, and the lighter struck the schooner. It was held that both the lighter and the schooner were in fault; the lighter for not having made fast properly, and the schooner for mooring too close to the lighter (*d*).

In harbours and waters where there are local rules, or an established custom as to the proper anchorage ground, a vessel would be held in fault for a collision caused by her bringing up elsewhere. So where shipbuilders moored a cruiser, which they were fitting out, so that her stern projected into the navigable channel in contravention of the local bye-laws, they were held partly to blame for a collision which occurred between two other vessels, and which might have been avoided had not the cruiser been moored in this unauthorised position (*e*). But if she were compelled to bring up and continue to lie in the fairway it would be otherwise (*f*). Thus, where a steamer, while going up the Thames on a flood tide, was compelled by the density of the fog to anchor in the fairway contrary to the Thames regulations, and the fog

Bringing up
in a fairway
or improper
place.

(*z*) *The Atlas*, 2 Mar. Law Cas. O. S. Dig. 1480.

(*a*) *Pangburn v. Gunn*, 4 Fed. Rep. 35.

(*b*) *The Thornton*, 2 Bened. 429.

(*c*) *The Scotia* (1890), 6 Asp. M. C. 541.

(*d*) *The Greenpoint*, 18 Fed.

Rep. 186.

(*e*) *Ellerman Lines v. Clyde Navigation Trustees* (1911), S. C. 122—Oct. of Sess.

(*f*) *The Kjobenhavn* (1874), 2 Asp. M. C. 213; and see *The Clarita* and *The Clara*, 23 Wall. 1.

continued such that there was no reasonable opportunity of moving her, she was held free from blame for collision with another steamer coming up after her (*g*). If there is no rule or custom requiring her to bring up out of the fairway she may anchor there, although directly in the track of ships. Thus, a vessel brought up in the Mersey directly in the track of the ferry steamers was held not to be in fault for lying there (*h*). In America it is held that if a vessel does bring up in the track of ferry-boats, as she is at liberty to do, she must keep a vigilant look-out and warn the ferry-boat of her position (*i*).

The obligation on a ship under way to keep clear of another at anchor, as before stated (*k*), applies although the ship at anchor is in an improper berth. And a vessel brought up in a berth which is improper only in the sense that it is an exposed and dangerous position does not thereby contribute to a collision caused by another ship negligently driving into her (*l*). But when a barge in the Thames was brought up in an exposed position, and was sunk partly by the swell of a passing steamer, it was held that the negligence in bringing up where she was exposed to the steamer's wash partly caused the loss, and the suit against the steamship was dismissed (*m*).

A vessel at anchor is not justified under all circumstances in holding on when by slipping she could avoid a collision. A vessel in Falmouth harbour was driving in a gale of wind towards the breakwater. She could have avoided the breakwater by slipping from her anchor and getting under way. She did not slip in time, went ashore, and did injury to the breakwater. It was held that she was liable for the damage because of her neglect in not slipping in time (*n*). The value of an anchor and chain slipped to avoid collision may be recovered if the danger was caused by the fault of the other ship (*o*).

Slipping
to avoid a
collision.

(*g*) *The Aguadillana* (1889), 6 Asp. M. C. 390.

(*h*) *The Lancashire* (1873), L. R. 4 A. & E. 198.

(*i*) *The D. S. Gregory*, 6 Blatchf. 528; *The Hudson*, 5 Bened. 206; *The Exchange*, 10 Blatchf. 168; and see *supra*, p. 366.

(*k*) *Supra*, pp. 42, 459.

(*l*) *The Despatch* (1860), 14 Moo. P. C. 83.

(*m*) *The Duke of Cornwall*, 1 Pr. Adm. Dig. p. 201.

(*n*) *The Uhla* (1867), L. R. 2 A. & E. 29, n.; 19 L. T. 89. Cf. *The Sapphire*, 11 Wall. 164; *The Gevalia*, 39 Fed. Rep. 47.

(*o*) *Supra*, p. 39. So a tow cast off to avoid collision may, it seems,

Article 29.

Getting
under way.

A vessel getting under way unnecessarily in bad weather, with a number of other ships about her, would probably be held in fault for a collision which would not have occurred if she had lain fast (*p*). So, a ship getting her anchor in a strong tide, which necessarily carried her across the bows of ships bound into harbour, was held in fault for tripping her anchor at the moment when other ships were crossing her as she drove (*q*). The duty of a heavy ship to exercise more than ordinary caution in getting under way, and of other ships to keep clear of her, has been insisted upon by the American Courts (*r*).

A vessel which was moved from one dock to another by a tug at night was held in fault for a collision with a ship at anchor. It was held that under the particular circumstances she had no right to be under way at all (*s*).

In *The John Fenwick* (*t*), it was held to be the duty of a vessel casting off from her moorings at night to warn an approaching vessel by exhibiting a light.

In America, it has been held that a ferry steamer starting from her slip when there was another vessel in her way which she ought to have seen (*u*), or a vessel which she knows to be brought up in her track, but which, owing to a heavy snow-squall, she cannot see (*x*), is in fault for a collision with the vessel riding.

A tug salvor started to tow to sea a yacht brought up on a lee shore, without getting up the yacht's anchor. The anchor fouled that of another yacht, which consequently drove ashore and was damaged. It was held, in America, that the tug was liable (*y*).

A schooner, not being able to get her anchor, set her sails to break it out of the ground. In consequence of having her

recover: *The Mount Hope*, 84 Fed. Rep. 910.

(*p*) *The Carrier Dove* (1864), Br. & Lush. 113; *The Julia M. Hallock*, 1 Sprague, 539; *O'Neil v. Sears*, 2 Sprague, 52; *The Thornton*, 2 Bened. 429. The last three are American decisions.

(*q*) *The John S. Smith*, 27 Fed. Rep. 398.

(*r*) *The City of Paris*, 14 Blatchf. 531; *The Hudson City*, 38

Fed. Rep. 446; *The Greenpoint*, 31 Fed. Rep. 231 (ferry-boat whose view was obstructed by car float).

(*s*) *The Borussia* (1857), Swab. 94.

(*t*) (1871), L. R. 3 A. & E. 500.

(*u*) *The Columbus*, Abbott, 384.

(*x*) *The Rockaway*, 19 Fed. Rep. 449; *The D. S. Gregory*, 6 Blatchf. 528.

(*y*) *The Addie B.*, 43 Fed. Rep. 163.

canvas set, she fouled another schooner at anchor. She was held in fault; and the crew of the other schooner not to be in fault for not giving her chain, which might have avoided the collision (*z*). Article 29.

In shifting berth in dock or elsewhere, if check lines are necessary to control the shipway in a high wind, it is negligence not to use them (*a*).

If a vessel rides by, or makes fast to, or runs foul of, any lightship or buoy, in addition to the obligation to make good all damage, she incurs a penalty of fifty pounds (*b*). Riding by a lightship.

A vessel in stays—"in irons"—is almost as helpless for the purpose of keeping out of the way of another as a ship at anchor. It is the duty of other ships to keep clear of her. Before going about it is the duty of those on board "to take a due look round beforehand to ascertain that no ship is in the neighbourhood likely to come upon them" (*c*). Ship in stays; precautions before going about.

If weather permits, a ship must have such canvas on her that she can be kept under command and be able to stay (*d*). Upon similar grounds, it would seem to be negligence in a ship to be hove-to unnecessarily in the track of ships, a vessel hove-to being almost helpless, and therefore an obstruction to the navigation (*e*).

It has been held by the Privy Council that a ship should not wear without reason when she can stay; and a ship has been held in fault for a collision with another astern when she wore unnecessarily (*f*). In America a schooner wearing so close ahead of another ship that the latter could not clear her was held in fault (*g*).

If a vessel misses stays the duty of those on board is to get her under command again as soon as possible (*h*). Missing stays.

Where it is the duty of a ship under the regulations to Ships working to windward in company.

(*z*) *The Melvina*, 43 Fed. Rep. 77.

(*a*) *The British Empire*, 24 Fed. Rep. 493.

(*b*) 57 & 58 Vict. c. 60, s. 666.

(*c*) *The Sea Nymph* (1860), Lush. 23; see also *The Ida* and *The Wasa* (1867), 15 L. T. 103; *The Allan* and *The Flora* (1866), 14 L. T. 860; *The Eleanor* and *The Alma* (1865), *ibid.* 240.

(*d*) *The Stirlingshire* and *The Africa* (1856), 2 Mar. Law Cas.

O. S. Dig. 672; *The Falkland* and *The Navigator* (1864), Br. & Lush. 204.

(*e*) See *supra*, p. 373.

(*f*) *The Falkland* and *The Navigator*, *ubi supra*.

(*g*) *The Saxonia* (1865), 2 Mar. Law Cas. O. S. 417.

(*h*) *The Kingston-by-Sea* (1849), 3 W. Rob. 152; *The Lake St. Clair* and *The Underwriter* (1877), 3 Asp. M. C. 361.

Article 29.

keep out of the way, she should not stand so close to the other ship, before going about, that if she misses stays a collision must take place. It will be no excuse that she was struck by a squall while in the act of going about (*i*). A full-rigged ship, with the wind aft, meeting a brig and a schooner, both close-hauled on the starboard tack, came into collision with the brig, owing to the sudden and unexpected going about of the schooner. It was held that she ought not to have stood so close to the other ships as to make a collision inevitable if either of them went about (*k*). So, a sailing ship is in fault if she goes about unnecessarily under the bows of a steamship (*l*).

Where two ships are turning through a narrow channel, one astern of the other and on the same tack, the duty of the sternmost ship is to keep a good look-out, and be ready to go about, if necessary, the instant the other goes about, so as not to risk a collision by standing on while the other is in stays, or has not gathered way on the other tack (*m*). It seems to have been considered by the Privy Council that a ship in stays, or just gathering way on the port tack, should apprise another ship approaching her on the starboard tack of her inability to keep out of the way (*n*). But a sailing ship turning up the Thames was held not to blame for giving no notice to a steamship astern of her intention to go about (*o*).

Rule in
America as
to beating
out tacks.

The rule in America as to ships working to windward in narrow channels is that they must "beat out their tacks," and not go about before the depth of water or exigencies of the navigation require it (*p*). Vessels are expected to know the channel and the point at which other ships will be compelled to go about (*q*). A ship going about before she gets to the edge of the channel, and thereby causing a collision

(*i*) *The Kingston-by-Sea*, ubi supra; *The Plato* and *The Perseverance* (1865), Holt, 262.

(*k*) *The Mobile* (1857), Swab. 69; *ibid.* 127.

(*l*) See *The Orwell*, supra, p. 396.

(*m*) *The Priscilla* (1870), L. R. 3 A. & E. 125.

(*n*) *The Lake St. Clair* and *The Underwriter* (1876), 3 Asp. M. C. 361; and see *The Leonidas*, Stuart's

Vice-Ad. Rep., Lower Canada (1858), p. 226.

(*o*) *The Palatine* (1872), 1 Asp. M. C. 468.

(*p*) *Thorp v. Hammond*, 12 Wall. 408; *The Empire State*, 1 Bened. 57; *The Bridgeport*, 6 Blatchf. 3; *The Charlotte Raab*, Brown, Adm. 453.

(*q*) *The Nellie D.*, 5 Blatchf. 245.

with a passing steamship, was held in fault (*r*). But the rule as to "beating out tacks" does not apply so as to preclude a ship from going about before she reaches the shoal water in order that she may be able to weather a point of land, or other object, on the next tack (*s*); nor has another vessel, whose duty it is to keep out of the way, a right to assume that she will go about as soon as she reaches the edge of the tide or eddy (*t*). The rule does not appear to have been expressly recognized in any Court in this country. In *The Palatine* (*u*), where there seems to have been room for its application, it was not referred to.

Where two vessels were beating to windward in company on the same tack, and the one to leeward had to go about to clear a third ship, the vessel to windward was held in fault for not having observed the other tacking, and was held liable for a collision with her which followed. It was held that she ought to have gone about at the same time as the vessel to leeward (*x*).

Whether a ship, being in stays, is required to hold herself in stays and allow another vessel to pass, is not clear. Two American cases are contradictory on the point. In *The Empire State* (*y*) the Court said that it is the duty of a ship to beat out her tack and come about on the other tack with proper despatch; and that "she is not obliged to remain in the wind for a steamer to pass her." On the other hand, in *The W. C. Redfield* (*z*), it was held that a sailing ship was in fault for not holding herself in stays to allow a tug and her tow to pass clear.

Whether a ship should hold herself in stays for another.

There are decisions of the American Courts to the effect that it cannot be imputed to a ship as a fault that she is sluggish in going about (*a*): and that she is not wrong in fore-reaching or shooting ahead in the wind's eye whilst going about (*b*); but if, in going about, she executes the

(*r*) *The Nereus*, 3 Bened. 238.

(*s*) *The Vicksburg*, 7 Blatchf. 216; *The Empire State*, *supra*.

(*t*) *Haight v. Bird*, 26 Fed. Rep. 539.

(*u*) 1 Asp. M. C. 468.

(*x*) *The Commodore Jones*, 25 Fed. Rep. 506.

(*y*) 1 Bened. 57. See also *The Renovator*, 30 Fed. Rep. 194.

(*z*) 4 Bened. 227. See also *The Arthur Gordon* and *The Independence* (1860), Lush. 270; *The Lake St. Clair* and *The Underwriter*, *supra*; and cases *supra*, p. 195, note (*h*).

(*a*) *The Charlotte Raab*, Brown, Adm. 453.

(*b*) 1 Parsons on Shipping (2nd ed.), 578, note.

Article 29.

Extra care
required in
passing over
fishing
grounds.

Vessels
navigated in
an unusual
manner or
course do so
at their own
risk.

manœuvre in an unexpected and unseamanlike fashion, she will be held in fault for a collision thereby occasioned (c).

Fishing boats have a right to fish on the high sea, and to be fast to their nets, whether their fishing ground is in the track of ships or not. It is the duty of other ships to take greater precautions when passing over a fishing ground, so as to keep clear of the fishing boats, and not make them cast off from their nets (d). Bringing up upon certain fishing grounds where drift-net fishing is being carried on is forbidden by statute (e).

Vessels navigating in an unusual manner or by an improper course do so at their own risk. By the bye-laws in force in the Tyne (clause 17), all vessels proceeding to sea are required to keep on the south side of mid-channel; and (clause 20) vessels crossing the river take upon themselves the responsibility of doing so with safety to the passing traffic. A vessel outward bound, coming out of the Tyne dock on the south side of the river, and either intentionally, or under the influence of the tide, crossing over to the north side of the river, came into collision on the north side with two steamships also going down the river. She was held in fault for the collision, as she should not have attempted to cross when there was risk of collision (f).

It was held in *The Smyrna* (g) that a usual and proper precaution for vessels to take when navigating a winding river against a strong stream is to keep under the points in the slack of the tide, so as to avoid descending vessels which are swept across the river into the opposite bight by the stream setting off the point. In the Thames, vessels were formerly required to navigate in this manner round certain points (h). But, except where local enactments provide otherwise, the

(c) *The B. C. Terry*, 30 Fed. Rep. 711.

(d) *The Columbus*, 2 Mar. Law Cas. O. S. Dig. 730; *Murphy v. Palgrave* (1870), 21 L. T. 209 (Irish case); *The Margaret* and *The Tuscar* (1867), 15 L. T. 86. But see *The Pacific* (1884), 9 P. D. 124, where a steamship going eight or nine knots at night over trawling ground in the North Sea was held free from blame.

(e) The Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22).

(f) *The Henry Morton* (1874), 2 Asp. M. C. 466. As to the duty of ships to keep on their proper side and in the usual track in rivers, see *supra*, pp. 421 *seq.*; and *The Java*, 14 Wall. 189.

(g) (1861), 2 Moo. P. C. N. S. 435.

(h) *The Margaret* (1884), 9 App. Cas. 873.

rule would seem to be different under the present law of Article 29.
 "starboard side" in the narrow channels (*i*).

In New York harbour, where ferry-boats are constantly coming out from their slips or docks at right angles to the course of vessels navigating the river, the law requires vessels navigating the river to keep in mid-channel, or if they go along the shore to go very slowly (*k*).

Where two steamships were meeting in a narrow channel, one going with and the other against the tide, and it was necessary for one of them to stop, it was held by the Supreme Court in America that the vessel going against the tide should have stopped at once, as she could do so the more readily (*l*). And in *The Talabot* (*m*), it was laid down in the Admiralty Division that it is a prudent rule for a steamship navigating a river against the tide to wait before rounding a point until a vessel coming from the opposite direction has passed clear, and a steamer was held in fault for not observing this rule in the river Scheldt. And in *The Frankfort* (*n*), a vessel was held to blame for not swinging and dredging up a difficult reach stern first in accordance with local custom. In *The Kennet* (*nn*) one vessel was held to blame for not blowing a warning blast before rounding a bend, and the other for rounding the bend against the tide too fast. In narrow channels.

The duties imposed upon a fleet of warships in regard to other vessels are considered under Art. 27 (*o*). Fleet of warships.

A vessel warping down the Thames against the flood tide was held in fault for a collision thereby occasioned (*p*); and a steamship proceeding down the Thames at night against a flood tide is required to exercise the greatest caution (*q*). Ships bound down the Thames against the flood.

A steamship is not justified in leaving a wharf in the Thames in a dense fog. If under way under such circumstances, it has been said that she should drop up, head upon tide, with her anchor on or near the bottom, so as to be able to bring up at once in case of emergency (*r*). The duty of a Ships dropping up stern foremost.

(*i*) See Article 25.

(*k*) *The Favorita*, 18 Wall. 598.

(*l*) *The Galatea*, 2 Otto, 439.

As to the Thames, see *infra*, p. 541.

(*m*) (1891) P. 184.

(*n*) (1910) P. 50.

(*nn*) (1912) P. 114.

(*o*) *Vide* p. 439, *supra*.

(*p*) *The Hope* (1844), 2 W. Rob. 8.

(*q*) *The Trident* (1855), 1 Sp. 217.

(*r*) *The Aguadillana* (1889), 6 Asp. M. C. 390.

Article 29. ship so navigating to warn a ship approaching her from astern was insisted upon in *The Juno* (*s*).

A keel in the Goole reach of the river Ouse was held in fault for driving through a narrow part of the fairway without her anchor on the bottom or near it (*t*).

It would probably be held to be the duty of a ship dropping through a fairway in this manner to exhibit a light over her stern, or in some other way to warn ships that she is approaching them stern foremost (*u*).

Rafts (Canada). By 43 Vict. c. 29 (Canada), Art. 27, ships are required to keep out of the way of rafts.

Warps. Although a vessel may run a warp across a navigable channel (*x*), she must slack it to allow other vessels to cross (*y*), and warn an approaching vessel of its presence (*z*).

Moving propeller in dock. A steamship that damaged another by negligently moving her propeller in a New York slip was held in fault (*a*).

In crowded docks; refusal to move. A tug attempted to pull a brig out of dock past a sloop, which had refused, on request, to move, and damaged the sloop. It was held that the tug was alone liable; but for her refusal to move, and for other reasons, the sloop was deprived of her costs (*b*).

A steam lighter undertook to push out of the way a craft that was obstructing her dock. The way she gave the craft caused her to strike the wharf and sink. The lighter was held to be alone in fault (*c*).

Tug working at ship ashore. A tug working at a vessel ashore in a fairway is required to make way for passing vessels (*d*).

Telegraph ships. The enactment relating to ships engaged in laying or repairing telegraph cables, and the duty of other ships to keep clear of them, has been already referred to (*supra*, pp. 298, 324).

Eddy tide. If a vessel enters an eddy tide, and is thereby prevented from answering her helm, and goes into collision with another ship, it is no excuse that the eddy prevented her

(*s*) (1894), 7 Asp. M. C. 506.

(*t*) *The Ralph Greyke* (1886), 6 Asp. M. C. 19.

(*u*) See *The Indian Chief* (1888), 14 P. D. 24.

(*x*) *The Echo*, 19 Fed. Rep. 453; *The Fulda*, *infra*.

(*y*) *The Maverick*, 1 Sprague, 23.

(*z*) *The Fulda*, 31 Fed. Rep. 351.

(*a*) *The City of Mecca*, 20 Fed. Rep. 159.

(*b*) *Duane v. Steamtug Emma J. Kennedy*, 5 Fed. Rep. 206.

(*c*) *The Lime Rock*, 55 Fed. Rep. 126.

(*d*) *The Cherokee*, 15 Fed. Rep. 119.

from answering her helm (e), unless the action of the tide could not have been anticipated or provided against (f); and the effect of the tide on other ships must be known and allowed for (g).

Article 29.

In the case of a steamship navigating the Goole reach of the river Ouse, where the water was so shallow that there was risk of her smelling the ground and failing to answer her helm, it was held to be her duty, by occasionally stopping her engines, to diminish her way, and so be well under control in case of emergency: and she was held in fault for neglect of this precaution (h).

Risk of smelling the ground.

If the weather is such that an object cannot be seen in time to avoid it, a vessel has no right to be under way at all. In such weather she should bring up on the first opportunity, and not get under way unless obliged to do so (i). In thick and bad weather generally, it is the duty of a vessel under way to exercise more than ordinary care to avoid doing damage to other ships (k). "Stress of weather" is an excuse frequently put forward for omitting to exercise ordinary care, but it is one which the Court is very unwilling to accept (l).

Being under way in thick weather; stress of weather.

In squally weather it is the duty of a ship not to approach another so near that if a squall strikes her she will go in collision with the other. A vessel will be held in fault if, without necessity, she navigates so close to another that her view is obstructed, and so she cannot see a third ship in time to avoid her (m); or that she is affected by the wash or suction of the ship ahead, and will not answer her helm (n). A steamship passing another ashore so close that, when the

Standing too close to other craft.

(e) *The La Plata* (1857), Swab. 220, 223; *The Russia*, 3 Bened. 471; *The City of Peking* (1888), 14 App. Cas. 40; *The Fred Jansen*, 49 Fed. Rep. 254; *The Sammie*, 36 Fed. Rep. 568.

(f) *The Rhodda* (1882), 8 App. Cas. 549. See *The Britannia*, 46 Davis, 130.

(g) *The Frantz Sigel*, 14 Blatchf. 480.

(h) *The Ralph Creyke* (1887), 6 Asp. M. C. 19, *supra*.

(i) *The Lancashire* (1873), L. R. 4 A. & E. 198; *The Otter* (1873), L. R. 4 A. & E. 203; *The Aguardillana* (1889), 6 Asp. M. C. 390, *supra*. And see *supra*, pp. 359,

365.

(k) *The Flint* (1848), 6 Not. of Cas. 271; *The John Harley* and *The William Tell* (1866), 13 L. T. 413.

(l) *The Uhla* (1867), 19 L. T. 89; *The Flint*, *ubi supra*.

(m) *The Zollverein* (1857), Swab. 96; and see *Mayhew v. Boyce* (1816), 1 Stark. 423.

(n) *The General William McCandless*, 6 Bened. 223, 226; *The Mariel*, 32 Fed. Rep. 103; *The City of Brockton*, 37 Fed. Rep. 897. As to the effect of suction, see *The Olympic* and *H.M.S. Hawke*, (1913) P. 214; *The Chicago*, 71 Fed. Rep. 537.

Article 29.

latter set her propeller in motion to work her off, she was canted by the race from the propeller and struck a third ship; was held in fault (o). An overtaking ship must not approach the ship ahead so close that, upon the latter stopping (p) or slightly changing her course (q), a collision cannot be avoided; nor may she pass the other at such speed that the latter is drawn against her by the suction she sets up (r).

A brig on the starboard tack endeavouring to pass a collier driving up the Thames with the tide was caught by a heavy squall which burst her foretopsail and did other damage. The brig came up into the wind and drove against the collier. She was held solely in fault for the collision, because, having reason to expect squalls, she should have given the other vessel a wider berth (s).

A barge turning down the Thames on a squally night stood so close to a ship at anchor that, upon her missing stays owing to a squall, she ran into her. The barge was held solely in fault (t).

In America, a steamship passing so close to a sloop at anchor that the boom of the latter was driven against her by a sudden gust of wind was held solely in fault (u). A tug took her tow so close to a ship at anchor that, upon her suddenly altering her course to clear the ship at anchor, the tow line parted, and the tow fouled the ship at anchor. The tug was held in fault for the collision (x). And where a steamship at sea sighted a schooner seven miles off, and shaped her course so as to pass within a cable's length of her, it was held by the Circuit Court that for two ships approaching each other at the rate of eighteen miles an hour such a course was "very far from an exercise of reasonable prudence" (y).

Where a ship, which had been ashore, came off unexpectedly and received damage in a collision with another

(o) *The F. & P. M.* (No. 1), 45 Fed. Rep. 703.

(p) *The Hackensack*, 32 Fed. Rep. 800.

(q) *The Laura V. Rose*, 28 Fed. Rep. 104.

(r) *The Ohio*, 91 Fed. Rep. 547.

(s) *The Globe* (1848), 6 Not. of Cas. 275.

(t) *The Plato and The Perseverance* (1865), Holt, 262.

(u) *The George Law*, 3 Bened. 396.

(x) *The City of Philadelphia v. Gavagnin*, 62 Fed. Rep. 617.

(y) *The Benefactor*, 14 Blatchf. 254.

ship which was near her, it was held that the latter was not bound to take such precautions that, at whatever time the ship ashore floated, she would not come against her (z).

Article 29.

A ship driving over a sand on which she had been ashore came into collision with another brought up just clear of the sand. It was held that the former was not in fault for the collision, and that it was the result of inevitable accident. The ship that had been ashore could not have let go her anchor whilst driving over the sand without risk to herself, and if she had let go when clear of the sand, the collision would not have been avoided (a).

If a ship steers a course to take her alongside another ship to speak her, or for any other purpose, she does so at her own risk (b). And a vessel that allows herself to swing, or takes up a berth, alongside another moored to the shore or at anchor, takes the risk of any damage she may receive in the operation (c). The Supreme Court of the United States held a steamship solely in fault for a collision with a pilot boat from which she was taking a pilot and which was plainly visible to her, although the pilot boat had no masthead light and crossed the bows of the steamship (d). The duty of a steamship not to have much way on when approaching her pilot boat has been insisted upon (e).

In another case (f), before the same Court, two tugs making for the same vessel in order to get the contract to tow came into collision. It was held that the proper and usual way for tugs to come alongside was to come up on the quarter heading the same way as the vessel, and that the tug which was ahead of the vessel was in fault for not rounding to and coming up under the ship's stern.

(z) *The Coxon*, 2 Mar. Law Cas. O. S. Dig. 549.

(a) *The Thornley* (1843), 7 Jur. 659; and see *The Buckhurst* (1881), 6 P. D. 152.

(b) *The Thames* (1805), 5 C. Rob. 345. See *The Bellerophon* (1876), 3 Asp. M. C. 58.

(c) *The Chalmette*, 52 Fed. Rep. 174, where the rudder-yoke of the stationary ship holed her: *The Moonlight*, 50 Fed. Rep. 478; *The Harry*, 15 Fed. Rep. 161.

(d) *The City of Washington*, 2 Otto, 31; and see *supra*, p. 332, for cases of collision with pilot boats.

(e) *The Ansgar*, 115 Fed. Rep. 440.

(f) *Sturgis v. Clough*, 21 How. 451. Cf. *Latham v. Hamilton*, 63 Fed. Rep. 856, where both tugs were held in fault for a collision between one of them and the schooner for which they were racing.

Article 29.

A steam-tug unnecessarily entering a narrow cut leading to the Bute Docks, after a signal had been made by the harbour authority for sailing ships to enter, was held in fault for a collision (*g*).

The Supreme Court in America has held that a vessel undertaking to pass another in a narrow channel (*h*), or navigating such a channel in weather that makes it dangerous (*i*), does so at her own risk. Where a ship was ashore in such a place, it was held that, whether she went ashore by her own negligence or not, another vessel attempting to pass her was in fault for running into her (*k*).

Where the leading vessel of two steamers proceeding down a river with the stream, and bound to the same place on its banks, rounded-to at a proper place to land her passengers, and the following vessel, instead of stopping and rounding-to under her stern, attempted to turn ahead of her and a collision occurred, the following vessel was (in Canada) held solely in fault (*l*).

Crossing lines
of traffic.

Though prudence requires a ship to avoid unnecessarily crossing the track of vessels bound upon well-known courses to and from a centre of commerce, it is not negligence for her to do so (*m*).

Vessel of
peculiar
construction,
or otherwise
dangerous
to others.

If a vessel is of a construction or is in a condition (*n*) which is specially dangerous to other vessels, it is her duty to warn approaching vessels of the fact. Where a ship of war carried on her stem under water a projecting ram or spur, it was said that under ordinary circumstances it would have been her duty to apprise a vessel coming alongside of the risk she ran in approaching her (*o*).

Special precautions are required of a ship in a disabled condition, of a ship hove-to and unable to keep clear of other ships, as well as of other ships approaching the disabled

(*g*) *The Effort* (1847), 5 Not. of Cas. 279.

(*h*) *The Merrimac*, 14 Wall. 199; *The Devonian*, 110 Fed. Rep. 588.

(*i*) *The Mohler*, 21 Wall. 230.

(*k*) *The Ellen S. Terry*, 7 Bened. 401.

(*l*) *The Crescent v. The Rowland Hill*, Stuart's Rep. (1858) (Vice-

Adm. Ct., Lower Canada), 289.

(*m*) *The Iberia*, 40 Fed. Rep. 893.

(*n*) As a steamship with no steam: *The Bowden*, 78 Fed. Rep. 649.

(*o*) *The Bellerophon* (1876), 3 Asp. M. C. 58; and see *The Batavier* (1853), 1 Sp. 378.

vessel (*p*); of a tug with a ship in tow, and of both the tug and her tow, so as not to damage each other when taking the tow-line on board, and during the performance of the towage (*q*). It is the duty of a ship unable to keep out of the way in compliance with the regulations to hail the other ship, and of the latter herself to keep out of the way (*r*).

Article 29.

'Apart from local regulations upon the subject, it is negligence in a dock or crowded waters to carry the anchor outside the rail, or not to stow and rig in spars and other hamper likely to injure other craft (*s*).

Stowing
anchors and
spars in dock.

In America, it is held that if a ship is damaged by a raft of such a size or construction as to be a danger to other vessels being navigated with ordinary care, the owner of the tug in charge of it is liable (*t*).

Rafts.

Where a vessel is coming out of dock or harbour, or executing a manœuvre in the course of which an alteration of her helm is necessary, another ship approaching her is justified in acting upon the assumption that the necessary measures will be taken by the former vessel with proper skill and despatch, and that her course will be that which is obviously intended. A schooner coming out of St. George's Dock in the Mersey, the tide being flood and the wind southerly, saw a tug with a ship in tow coming down the river towards her. She put her helm hard-a-port and scandalized her mainsail in order to get her head to point down the river. Owing to the flood tide catching her under the starboard bow she did not answer her helm readily, and came into collision with the tug. If she had run up her outer jib, which she did not do, she would have answered her helm better, and would have kept clear of the tug. The latter had kept her course in the expectation that the schooner would set her jib and straighten herself in the river, as she was intending to do. It was held that the schooner was solely in fault for the collision, and that the tug did right in acting upon the assumption that the

Coming out of
and entering
dock.

(*p*) *The Arthur Gordon and The Independence* (1860), Lush. 270; and see *supra*, pp. 20, 194.

(*q*) See *supra*, pp. 202 *seq.*

(*r*) *The Lake St. Clair and The Underwriter* (1876), 3 Asp. M. C. 361.

(*s*) *The Sontag*, 40 Fed. Rep.

174; *The Palmetto*, 1 Biss. 140; *The Kolon*, 9 Ben. 197; *The Industrie*, 27 Fed. Rep. 767. Cf. *supra*, pp. 26, 32.

(*t*) *The Niagara*, 44 Fed. Rep. 775; *The Athabasca*, 45 Fed. Rep. 651.

Article 29. schooner's jib would have been run up, and that she would have straightened herself and kept on the tug's starboard side (*u*).

As a general rule a vessel entering a dock must wait until all outgoing vessels are clear (*x*).

Rounding a blind corner.

It is the duty of a ship that is about to round a blind corner, or navigating under high land which hides her from other craft, to give some notice of her presence to approaching vessels (*y*). So, where two ships approaching a lofty vessel from opposite sides rounded under her stern so close that neither saw the other's lights until it was too late to avoid collision, both were held to be in fault (*z*).

Dumb barges.

Dumb barges or lighters that drive with the tide have little or no control over their own movements, and cannot keep out of the way of other craft. In the absence of any rule or custom, they are not required to navigate in the shallow water of a river, so as to leave the deep channel open to vessels of greater draught, but in the Thames, where they do not carry anchors, they are justified in going on after being overtaken by a fog, until they come in contact with something to which they can make fast (*a*). It is therefore the duty of other vessels, and particularly of steamships, to keep out of their way. In order to do this, they must know, in each case, the set of the tide and probable course of the lighter (*b*). It is the duty of a barge in tow to do what she can to avoid collision, but she is entitled to assume that her tug will be navigated reasonably well and will not be held to blame for failing to take a step which would have averted the collision, but would have been unnecessary if the tug had done her duty (*c*).

(*u*) *The Ulster*, 1 Mar. Law Cas. O. S. 234. Cf. *The Franconia* (1877), 2 P. D. 8; *The Mourne*, (1901) P. 68; *The Sunlight*, (1904) P. 100; *The Servia*, 42 Davis, 144, *supra*, p. 8; *Walsh v. Brooklyn and New York Ferry Co.*, 68 Fed. Rep. 507; *The Hackensack*, 5 Fed. Rep. 121.

(*x*) *Taylor v. Burger and Another* (1898), 8 Asp. M. C. 364.

(*y*) *The Kennet*, (1912) P. 114.

(*z*) *The Albany*, 74 Fed. Rep. 311.

(*a*) *The Ralph Creyke* (1886), 6 Asp. M. C. 19; *The Rose of England* (1888), 6 Asp. M. C. 304.

(*b*) *The Swallow* (1876), 3 Asp. M. C. 371; *The Owen Wallis* (1873), L. R. 4 A. & E. 175. For American decisions to the same effect, see *Fretz v. Eull*, 12 How. 466; *Pearce v. Page*, 24 How. 228; *Butterfield v. Boyd*, 4 Blatchf. 356.

(*c*) *The W. H.* 1 and *The Knight Errant*, (1911) App. Cas. 30.

In a river, harbour, or narrow channel, steamships must not go at a rate of speed which will endanger passing vessels by the suction it sets up (*d*), or will raise a swell which may sink or damage barges and other craft. In the Thames, and some other rivers, there are bye-laws to this effect. Whatever the rate of speed required by local bye-laws, if a ship, though not exceeding that rate, endangers other craft, she will be held in fault (*e*). But a vessel sunk or damaged by the swell of a passing steamship cannot recover if she is mismanaged, overladen (*f*), or unfit to encounter the ordinary wash of river traffic (*g*). In the Suez Canal, five-and-a-half knots; in the Manchester Ship Canal, six miles an hour; in the Tees, six miles an hour; and within half a mile of the shore in the port of Portsmouth, seven miles an hour are the highest rates of speed allowed by the local rules. Where a rate of speed is specified by a local rule of navigation or Act of Parliament, the rate over the ground, as distinguished from the rate through the water, is *prima facie* intended (*h*).

Article 29.

Speed in narrow channels.

Where a vessel is being launched, the law casts upon the persons in charge of the launch the obligation of conducting it with the utmost precaution, and of giving such notice as is reasonable and sufficient to prevent injury to passing vessels. In *The Andalusian* (*i*), although notice of the intended launch was posted up in a conspicuous place, flags were flying on the ship to be launched, and two tugs with boats were employed to warn passing vessels, a vessel that was passing was not warned, and those in charge of the launch were held responsible for a collision with her.

Special precautions required at launch.

In *The Blenheim* (*k*), Dr. Lushington said, with regard to the duty of those in charge of the launch:—"Such reasonable notice of a launch shall be given as shall prevent danger or reasonable chance of danger to other vessels navigating in the river. That is the first great principle and rule in these

(*d*) *Supra*, p. 475.

(*e*) *The Batavier* (1854), 1 Sp. 378; 9 Moo. P. C. 286. See *The Duke of Cornwall*, 1 Pr. Adm. Dig. 201; *Smith v. Dobson* (1841), 3 M. & G. 59; *The Columbia*, 61 Fed. Rep. 220; *The Majestic*, 48 Fed. Rep. 730; *The Monmouth and The Maritan*, 44 Fed. Rep. 809.

(*f*) *Luxford v. Large* (1833), 5 C. & P. 421.

(*g*) *The Pilgrim*, 57 Fed. Rep. 670.

(*h*) *The R. L. Alston* (1883), 8 P. D. 5.

(*i*) 2 P. D. 231. See also *The Vianna* (1857), Swab. 405.

(*k*) 4 Not. of Cas. 393.

Article 29.

cases. As all other vessels have a right to navigate in a river, no person shall interfere with that navigation without such reasonable notice of a launch as may prevent the chance of an injury to them. What is reasonable notice depends on local circumstances, the breadth of the river, the number of vessels passing, and other circumstances of that kind. It must be not a mere general notice of a launch on a particular day; the notice must so specify the time of the launch that vessels navigating up and down the river may not be damaged or incur danger."

In *The Andalusian* (*l*) the duty of those in charge of a launch was thus stated: "The law throws upon those who launch a vessel the obligation of doing so with the utmost precaution, and giving such notice as is reasonable and sufficient to prevent any injury happening from the launch; and, moreover, the burden of showing that every reasonable precaution has been taken, and every reasonable notice given, lies upon her and those navigating the launch." This statement of the law was cited and acted upon by Butt, J., in *The George Roper* (*m*). In the same case the learned judge pointed out that, "when you set a vessel of large size, without engines and without a helm, and with only a tug to manage her, off the ways at a speed of seven knots across the fairway of the river Mersey, the utmost precautions are only reasonable." He held that the people in charge of the launch were in fault for not taking every possible step to assure themselves that no vessel was approaching the ways before the launch was started. He also expressed his opinion that in the Mersey the tug or tugs attending a launch should be decorated with flags in the usual way when a launch is about to take place (*n*).

In *The Cachapool* (*o*), it was held that a vessel at anchor in the way of a launch was in fault for a collision with the launch. Notice had been given her at six o'clock of the intended launch, which took place at half-past ten; and shortly before that hour a tug had been sent by those in

(*l*) (1877), 2 P. D. 231.

(*m*) (1883), 8 P. D. 119. Similar language was used by Sir R. Phillimore in *The Glengarry* (1874), 2 P. D. 235.

(*n*) See also *The Glengarry*

(1874), 2 P. D. 235, on this point; *Maister v. Humphreys*, 3 Fed. Rep. 535.

(*o*) (1882), 7 P. D. 217. As to these cases, see *The Westernland*, *supra*, p. 37.

charge of the launch to endeavour to get the ship at anchor to allow the tug to tow her out of the way.

Article 29.

In *The Glengarry* (*p*); it was held that all proper precautions were taken, and that the vessel under way (a tug with barges in tow) was solely in fault for steaming across the path of *The Glengarry* at the moment she was being started.

Even after proper notice of a launch has been given, it must not take place so long as other vessels are in the way, but where postponement of the launch would have been attended with danger to life and property, and the risk of striking the plaintiff's vessel was not great, it was held that the managers of the launch were justified in taking the lesser risk, though it in fact resulted in damage to the plaintiff's vessel (*q*). If it is customary for the harbour-master to superintend or be present, it should not take place in his absence (*r*).

There is no rule in law requiring small vessels to keep out of the way of larger ones, though it may be much easier for them to do so than for the larger ship to take the steps required by the regulations. A large ship going at a slow speed in a narrow channel cannot alter her course rapidly, and may be unable to do all that is necessary to avoid collision. But, so far as she can do so, she must comply with the regulations; and in such a case it will be the duty of the smaller vessel to take such precautions as are rendered necessary by the comparatively helpless condition of the larger ship (*s*).

Small craft not required by law to keep out of the way of heavy ships.

The paramount duty of both craft to do what is necessary to avoid collision is brought out more distinctly by the American than by the English cases. A small sailing boat, in a flat calm, was struck by a steamship with a heavy barge lashed alongside. The sailing boat was held in fault (as well as the steamship), because she did not use her oars to

(*p*) (1877), 2 P. D. 235.

(*q*) *The Highland Loch*, (1912) App. Cas. 312. The plaintiff in this case had obstinately refused to move his ketch, and the launch had been postponed for as long as possible to enable him to get to a

place of safety.

(*r*) *The United States* (1865), 12 L. T. 33.

(*s*) See *The La Plata* (1857), Swab. 220; on app., *ibid.* 298; *The Arthur Gordon* and *The Independence* (1860), Lush. 270.

Article 29.

get out of the way of the steamship (t); and a schooner of 130 tons, becalmed in a difficult position in a river, was held in fault for not using her sweeps, or having a boat to tow ahead, so as to avoid a steamship that struck her (u). In New York harbour, where large steamships cannot take up their berths in their slips without swinging against the ends of the piers, it is held to be the duty of small craft moored at the piers to shift, so as not to be crushed by the big ships (x).

Reservation of Rules for Harbours and Inland Navigation.

ARTICLE 30.

Article 30.

Local rules
not affected
by the general
rules.

Nothing in these rules shall interfere with the operation of a special rule duly made by local authority, relative to the navigation of any harbour, river, or inland waters.

This Article is identical with Art. 30 of the Regulations of 1897, and with Art. 25 of 1884. It must be read together with the preliminary paragraph (*supra*, p. 312), which directs that the regulations shall be followed "upon the high seas, and in all waters connected therewith navigable by seagoing vessels." The effect of local rules in all waters within the King's dominions to which the Merchant Shipping Act, 1894, applies, is saved by sect. 421.

Local rules have not, in all cases, been recognised by the Courts as of equally binding effect with the sea regulations; but there is no doubt that an infringement of a local rule made by a competent authority and applicable to the case will, unless excused by special circumstances, be held to be negligence contributing to a collision (y). A bye-law made under a local Act required ships coming into the Tyne to keep on the north side of the river. *The Raithwaite Hall*, coming in from the sea in a thick fog, was in collision, on the south side of the river, with a vessel bound out. In the absence of proof of negligence on the part of the latter, *The*

(t) *The Bay Queen*, 42 Fed. Rep. 555.
271.

(u) *The B. K. Washburn*, 19 Fed. Rep. 788.

(x) *The Etruria*, 88 Fed. Rep.

(y) See *Cayzer v. Carron Co.*, *The Margaret* (1883), 9 App. Cas. 873; *The Yourri* and *The Spearman* (1884), 10 App. Cas. 276.

Raithwaite Hall was held to be in fault for the collision (z). Article 30.

In this case Sir R. Phillimore said, with regard to the effect of local rules: "There should, however, be no misunderstanding as to the effect of these and similar bye-laws governing the navigation of a river. It cannot be held that, because they or any of them are disobeyed, the vessel disobeying them is therefore to be held to blame. They are only evidence of what it is the duty of a vessel to do under the circumstances named in the particular bye-law. As such evidence, however, they are an important element in every case that comes within their provisions; and if it should appear that by the breach of one of them a ship has occasioned or contributed to a collision, the existence of such a bye-law would afford the very strongest reason for holding that a ship had been guilty of a breach of duty and was to blame for the collision" (a).

Since the repeal of sect. 419 (4) of the Merchant Shipping Act, 1894, a breach of a local rule and of a collision regulation is in each case evidence of negligence, and no presumption of fault arises from the breach of either, unless a local Act enacts such a presumption on the breach of a local rule (b). Effect of infringement.

There are local rules in force at and in the following places and waters: Arundel, Avon, Barrow, Barry Docks, Belfast, Berehaven, Blyth, Boston, Bristol, Caledonian Canal, Cardiff, Carron River, Chatham, Clyde, Cork, Cowes, Dartmouth, Deptford, Dublin, Falmouth, Galway, Gloucester and Berkeley Canal, Holyhead, Humber, Ipswich, Limerick, Londonderry, Manchester Ship Canal (c), Medway, Mersey, Mersey and Irwell Navigation, Milford, Newport (Mon.),

(z) *The Raithwaite Hall* (1874), 2 Asp. M. C. 210.

(a) As to the obligation to obey local rules, the recognition of them by an Admiralty Court, and proof of them, see *The Henry Morton* (1874), 2 Asp. M. C. 466; *The Peerless* (1860), 13 Moo. P. C. 484; *The Smyrna* (1863), 2 Moo. P. C. N. S. 435. As to the effect of a breach of a local statutory rule or duty, see *The United Service* (1883), 8 P. D. 56; *Atkinson v.*

Newcastle and Gateshead Waterworks Co. (1877), 2 Ex. D. 441. Ignorance of a local rule is no excuse for disobeying it: *The River Derwent* (1889), 6 Asp. M. C. 467.

(b) As in the Solent Navigation Act, 1881 (44 & 45 Vict. c. cccix.), s. 8.

(c) Some bye-laws made have not, however, been confirmed by the Board of Trade as required by sect. 198 of the Manchester Ship Canal Act, 1898.

Article 30.

Newry, Orwell, Ouse (Upper and Lower), Pembroke, Plymouth, Portland, Portsmouth, Port Talbot, Preston, Queens-town, Runcorn and Weston Canal, Ryde, Solent, Southampton, Suir, Sunderland, Swansea, Tees, Thames, Tyne, Warkworth, Waterford, Weaver Navigation, Whitby, Windermere, Woolwich, Youghal (*d*). Some of these rules are full and almost identical with the sea regulations; others are scanty and antiquated. Some deal with ships' lights, speed, anchorage ground, docking; others with local matters foreign to the subject of this work.

These rules derive their force either from local Acts, or from the Merchant Shipping Act, 1894, s. 421 (2), which gives His Majesty power to make rules where they cannot be made otherwise; or from the Harbour, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), giving dock and harbour authorities similar power; or from 28 & 29 Vict. c. 125, relating to dockyard ports (*e*).

There are local rules in force in some foreign rivers and waters, such as the Bosphorus, the Danube, the Suez Canal, the inland waters and lakes of the United States and Canada, and probably many other foreign waters (*f*). Whether the words of Art. 30 as to "rules made by local authority" apply to foreign as well as to British rules, has not been decided.

The "Inland Waters" rules of America contain many additions to and alterations of the general collision regulations (*g*). They are applicable in Boston, New York, Baltimore, Galveston, San Francisco, and other harbours and

(*d*) The above list contains most of the more important places where local rules are in force, but is not exhaustive. See H. Stuart Moore's *Rules of the Road at Sea*, 4th ed. For a fuller list with dates of the rules, see Halsbury's *Laws of England*, vol. 26, p. 480.

(*e*) The dockyard ports for which rules have been made are Berehaven, Chatham, Deptford, Pembroke, Plymouth, Portland, Portsmouth, Queenstown, Sheerness, and Woolwich. See Orders in Council of 29th Feb. 1868; 29th June, 1878; 19th May, 1885; 29th June, 1888; 15th Aug. 1890; 22nd Nov. 1890;

17th Sept. 1900 (Portsmouth); 26th Sept. 1901 (Berehaven); 5th Dec. 1902 (Portland). There are also rules for Gibraltar: Ord. in Council, 7th March, 1898; London Gazette, 13th Jan. 1899.

(*f*) *The Smyrna* (1863), 2 Moo. P. C. N. S. 447; *The Clieveden*, (1894) App. Cas. 625, are decisions upon Danube rules. The Sea Rules apply to the Elbe.

(*g*) These, together with the American rules for the Great Lakes and Western rivers, are set out in "The Rules of the Road at Sea," above mentioned.

waters of the seaboard of the United States, the limits of which are set out in the *London Gazette*, 9th July, 1895. Article 30.

Difficulties arise in some cases where the local rules are not consistent with the general regulations; but it appears that in the waters in which they are in force the local rules must be obeyed without regard to the general regulations, if the latter conflict with them. At a time when there was no bye-law in force in the Thames requiring sailing ships to carry lights, a Trinity sailing ballast-lighter was run down in the river when carrying no lights. It was held that, not being a sea-going vessel, she was not required by the sea regulations to carry lights, and that she was not required to carry them under the local rules, there being no rule on the subject (*h*). Sir R. Phillimore expressed an opinion that the power of the Thames Conservators did not enable them to make bye-laws for sea-going ships, and their powers applied to river craft only. It seems, however, that the existing Thames bye-laws are binding on all ships in the Thames. It appears that where the local rules do not conflict with the general rules, the latter are supplementary to the local rules (*i*); several recent cases (*k*) show the difficulties, both of construction and locality, which arise where the sea regulations are applied in conjunction with local rules. For example, in the estuary of the Thames it is extremely difficult to draw the line at which the sea regulations begin, and the Thames rules cease, to operate. As the former contain a "starboard side" rule, and the latter do not, the matter is one which ought not to be left to the Courts to decide (*l*).

Local rules, though not made by any competent authority, may, by long usage and well-recognised practice, establish a custom, the infringement of which will be negligence. The obligation to obey such a custom of the river was upheld by the Privy Council in *The Fyenoord*. That case was decided under sect. 297 of 17 & 18 Vict. c. 104, by which it was Customary course.

(*h*) *The C. S. Butler* (1873), L. R. 4 A. & E. 238.

(*i*) *Supra*, p. 300.

(*k*) *E.g.*, *The Harvest* (1886), 11 P. D. 90; *The Minnie*, (1894) P. 336; *The Winstanley*, (1896) P. 297; *The Carlotta*, (1899) P. 223.

(*l*) In America the Secretary to the Treasury has power to define by bearings "the line dividing the high seas from rivers, harbours, and inland waters": Act of Congress, 19th Feb. 1895, c. 102; 28 Stat. 672, s. 2.

Article 30. enacted, in effect, that vessels going up the Thames should keep on the north or starboard side. *The Fyenoord*, a foreign ship, was navigating on the south side, and came into collision with a vessel bound down. It was held that, even if the statute was not binding on foreign ships, a custom had emanated from the statute that ships should navigate in accordance with it, and that *The Fyenoord* was to blame for transgressing the custom (m).

Distress Signals.

ARTICLE 31.

Article 31.
Distress
signals.

When a vessel is in distress, and requires assistance from other vessels, or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, viz. :—

In the daytime—

1. *A gun or other explosive signal fired at intervals of about a minute;*
2. *The International Code signal of distress indicated by N. C.;*
3. *The distant signal, consisting of a square flag, having either above or below it a ball, or anything resembling a ball;*
4. *A continuous sounding with any fog-signal apparatus.*

At night—

1. *A gun or other explosive signal fired at intervals of about a minute;*
2. *Flames on the ship (as from a burning tar barrel, oil barrel, &c.);*
3. *Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals;*
4. *A continuous sounding with any fog-signal apparatus.*

(m) *The Fyenoord* (1857), Swab. 374. See also, as to local custom, *The Smyrna* (1863), 2 Moo. P. C.

N. S. 447; *Kennedy v. The Sarmatian*, 2 Fed. Rep. 911.

This Article corresponds with Art. 31 of the Regulations of 1897, and Art. 27 of 1884. The words "or other explosive signal" are new. These distress signals are made under a different section (sect. 434) of the Merchant Shipping Act, 1894, to that (sect. 418) under which the collision regulations are made (*n*). If a master of a vessel uses or permits anyone under his authority to use any of these signals of distress, except in the case of the vessel being in distress, he is liable to pay compensation for any labour undertaken or loss sustained in consequence of that signal having been supposed to be a signal of distress (*o*). But this sub-section does not by implication give any right to compensation to persons who, in response to signals of distress properly used, offer services which are not required (*p*). By the Merchant Shipping (Convention) Act, 1914 (*q*), s. 6, a penalty of £50 is imposed on persons improperly using the above distress signals or private signals likely to be mistaken for distress signals, and by sect. 5, masters of British ships are obliged on receipt of a wireless distress call to go to the assistance of the persons in distress. A code of signals is given in Schedule II. of the Act.

THE INTERNATIONAL CONVENTION ON SAFETY OF LIFE AT SEA.

This convention, which was signed in London on the 20th January, 1914, is set out in the 1st Schedule to the Merchant Shipping (Convention) Act, 1914 (4 & 5 Geo. 5, c. 50), and contains an Article (No. 14) which will involve the amendment of the collision regulations in the near future. It has been agreed that the Regulations shall be amended in accordance with the following provisions:—

Future
amendments
of regula-
tions.

Article 2.—The second white mast-head light to be compulsory.

Article 10.—A permanent fixed stern light to be compulsory.

(*n*) They were inserted in the Collision Regulations of 1880 and 1884, apparently by mistake.

(*o*) Merchant Shipping Act,

1894, s. 434 (2).

(*p*) *The Elswick Park*, (1904) P. 73.

(*q*) 4 & 5 Geo. 5, c. 50.

Article 14.—A special day signal to be compulsory for motor vessels.

Article 15.—A special sound signal to be established for use by a vessel in tow, or if the tow is composed of several vessels, by the last vessel of the tow.

Article 31.—Article 31 to be modified in the following manner:—Add to the lists of both day and night signals the international radio-telegraph distress signal.

6.

APPENDIX I.

THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA (*a*).

PRELIMINARY.

These rules shall be followed by all vessels upon the high seas and in all waters connected therewith, navigable by sea-going vessels.

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules when she is not at anchor, or made fast to the shore or aground.

RULES CONCERNING LIGHTS, &c.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

Art. 1. These rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

Art. 2. A steam vessel when under way shall carry—

- (a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than 20 feet, and if the breadth of the vessel exceeds 20 feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than 40 feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon

(*a*) Made by Order in Council of 13th October, 1910. In the Regulations numerals have been substituted for most of the numerals expressed by words in 1896, but the change has not been made uniformly. The Order in Council and the Regulations are issued as a separate publication, price 1*d*.

- of 20 points of the compass, so fixed as to throw the light 10 points on each side of the vessel, viz., from right ahead to 2 points abaft the beam on either side, and of such a character as to be visible at a distance of at least 5 miles.
- (b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles.
 - (c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles.
 - (d) The said green and red side lights shall be fitted with inboard screens projecting at least 3 feet forward from the light, so as to prevent these lights from being seen across the bow.
 - (e) A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in sub-division (a). These two lights shall be so placed in line with the keel that one shall be at least 15 feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

Art. 3. A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than 6 feet apart, and when towing more than one vessel shall carry an additional bright white light 6 feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Art. 2 (a), except the additional light, which may be carried at a height of not less than 14 feet above the hull.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

Art. 4.—(a) A vessel which from any accident is not under command, shall carry at the same height as the white light mentioned in Art. 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights, in a vertical line one over the other, not less than 6 feet apart, and of such a character as to be visible all round the horizon at a distance of at least 2 miles; and shall by day carry in a vertical line

one over the other, not less than 6 feet apart, where they can best be seen, two black balls or shapes, each 2 feet in diameter.

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Art. 2 (a), and, if a steam vessel, in lieu of that light, three lights in a vertical line one over the other, not less than 6 feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least 2 miles. By day she shall carry in a vertical line one over the other, not less than 6 feet apart, where they can best be seen, three shapes not less than 2 feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(c) The vessels referred to in this Article, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot, therefore, get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Art. 31.

Art. 5. A sailing vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Art. 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than 2 points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 7. Steam vessels of less than 40, and vessels under oars or sails of less than 20, tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Art. 2 (a), (b) and (c), but if they do not carry them they shall be provided with the following lights:—

1. Steam vessels of less than 40 tons shall carry:

(a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than 9 feet, a bright

white light constructed and fixed as prescribed in Art. 2 (a), and of such a character as to be visible at a distance of at least 2 miles.

- (b) Green and red side lights constructed and fixed as prescribed in Art. 2 (b) and (c), and of such a character as to be visible at a distance of at least 1 mile, or a combined lantern showing a green light and a red light from right ahead to 2 points abaft the beam on their respective sides. Such lantern shall be carried not less than 3 feet below the white light.
- 2. Small steamboats, such as are carried by sea-going vessels, may carry the white light at a less height than 9 feet above the gunwale, but it shall be carried above the combined lantern, mentioned in sub-division 1 (b).
- 3. Vessels under oars or sails, of less than 20 tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.
- 4. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Art. 4 (a), and Art. 11, last paragraph.

Art. 8. Pilot vessels, when engaged on their station on pilotage duty, shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the masthead, and may, instead of the coloured lights above mentioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

A steam pilot vessel exclusively employed for the service of pilots licensed or certified by any pilotage authority or the committee of any pilotage district in the United Kingdom when engaged on her station on pilotage duty and in British waters and not at anchor shall in addition to the lights required for all pilot boats carry at a distance of eight feet below her white masthead light a red light visible all round the horizon and

of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the coloured side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty, and at anchor, she shall carry in addition to the lights required for all pilot boats the red light above mentioned, but not the coloured side lights.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

Art. 9.*† Fishing-vessels and fishing-boats, when under way and when not required by this Article to carry or show the lights herein-after specified shall carry or show the lights prescribed for vessels of their tonnage under way.

- (a) Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night with outlying tackle extending not more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light.

Open boats, when fishing at night, with outlying tackle extending more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least 3 feet below the first light and at a horizontal distance of at least 5 feet away from it in the direction in which the outlying tackle is attached.

- (b)‡ Vessels and boats, except open boats as defined in subdivision (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than 6 feet and not more than 15 feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.

Within the Mediterranean Sea and in the seas

* This Article does not apply to Chinese or Siamese vessels.

† The expression "Mediterranean Sea" contained in sub-sections (b) and (c) of this Article includes the Black Sea and the other adjacent inland seas in communication with it.

‡ Dutch vessels and boats when engaged in the "kol," or hand-line, fishing will carry the lights prescribed for vessels fishing with drift nets.

bordering the coasts of Japan and Korea* sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

- (c) Vessels and boats, except open boats as defined in subdivision (a), when line-fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of subdivision (h), shall carry the same lights as vessels fishing with drift-nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea* sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

- (d) Vessels, when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

1. If steam-vessels, shall carry in the same position as the white light mentioned in Article 2 (a), a tricoloured lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 nor more than 12 feet below the tricoloured lantern a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.

2. If sailing-vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in sub-division (d) 1 and 2 shall be visible at a distance of at least 2 miles.

- (e) Oyster dredgers and other vessels fishing with dredge nets shall carry and show the same lights as trawlers.

* Also, as regards Russian vessels, in the seas (excluding the Baltic) bordering the coasts of Russia.

- (f) Fishing-vessels and fishing-boats may at any time use a flare-up light in addition to the lights which they are by this Article required to carry and show, and they may also use working lights.
- (g) Every fishing-vessel and every fishing-boat under 150 feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile.

Every fishing-vessel of 150 feet in length or upwards, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by Article 11.

Should any such vessel, whether under 150 feet in length, or of 150 feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least 3 feet below the anchor light, and at a horizontal distance of at least 5 feet away from it in the direction of the net or gear.

- (h) If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day-signal required by sub-division (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain-storms make the signal prescribed for a vessel at anchor. (See sub-division d, and the last paragraph, of Article 15.)
- (i) In fog, mist, falling snow, or heavy rain-storms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag-net, and vessels line fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively, at intervals of not more than one minute make a blast; if steam-vessels, with the whistle or syren, and if sailing-vessels with the fog-horn; each blast to be followed by ringing the bell. Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signals at intervals of not more than one minute.
- (k) All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which these vessels can pass.

The vessels required by this Article to carry or show the

lights herein-before specified shall not be obliged to carry the lights prescribed by Article 4 (a), and the last paragraph of Article 11.

Art. 10. A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of 12 points of the compass, viz., for 6 points from right aft on each side of the vessel, so as to be visible at a distance of at least 1 mile. Such light shall be carried as nearly as practicable on the same level as the side lights.

Art. 11. A vessel under 150 feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least 1 mile.

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than 20, and not exceeding 40, feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than 15 feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Art. 4 (a).

Art. 12. Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal.

Art. 13. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by ship-owners, which have been authorized by their respective Governments and duly registered and published.

Art. 14. A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape 2 feet in diameter.

SOUND SIGNALS FOR FOG, &c.

Art. 15. All signals prescribed by this Article for vessels under way shall be given:

1. By "steam vessels" on the whistle or siren.

2. By "sailing vessels and vessels towed" on the fog-horn.

The words "prolonged blast" used in this Article shall mean a blast of from 4 to 6 seconds' duration.

A steam vessel shall be provided with an efficient whistle or

siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell.* A sailing vessel of 20 tons gross tonnage or upwards shall be provided with a similar fog-horn and bell.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this Article shall be used as follows; viz.:—

- (a) A steam vessel having way upon her shall sound, at intervals of not more than 2 minutes, a prolonged blast.
- (b) A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not more than 2 minutes, 2 prolonged blasts, with an interval of about 1 second between them.
- (c) A sailing vessel under way shall sound, at intervals of not more than 1 minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.
- (d) A vessel, when at anchor, shall, at intervals of not more than 1 minute, ring the bell rapidly for about 5 seconds.
- (e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules, shall, instead of the signals prescribed in sub-divisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz., one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not, they shall make some other efficient sound signal at intervals of not more than 1 minute.†

* In all cases where the rules require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small sea-going vessels.

† Dutch steam pilot-vessels, when engaged on their station on pilotage duty in fog, mist, falling snow, or heavy rain-storms are required to make at intervals of 2 minutes at most one long blast with the siren, followed after 1 second by a long blast with the steam whistle and again after 1 second by a long blast on the siren. When not engaged on their station on pilotage duty, they make the same signals as other steamships.

SPEED OF SHIPS TO BE MODERATE IN FOG, &c.

Art. 16. Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

STEERING AND SAILING RULES.

Preliminary—Risk of Collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

Art. 17. When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz.:—

- (a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.
- (b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.
- (c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.
- (d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.
- (e) A vessel which has the wind aft shall keep out of the way of the other vessel.

Art. 18. When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel

is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 19. When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

Art. 20. When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Art. 21. Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed.

Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See Arts. 27 and 29.)

Art. 22. Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.

Art. 23. Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Art. 24. Notwithstanding anything contained in these rules, every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, *i.e.*, in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.

Art. 25. In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

Art. 26. Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats.

Art. 27. In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

SOUND SIGNALS FOR VESSELS IN SIGHT OF ONE ANOTHER.

Art. 28. The words "short blast" used in this Article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, viz.:—

One short blast to mean, "I am directing my course to star-board."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern."

NO VESSEL UNDER ANY CIRCUMSTANCES TO NEGLECT PROPER PRECAUTIONS.

Art. 29. Nothing in these rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

RESERVATION OF RULES FOR HARBOURS AND INLAND NAVIGATION.

Art. 30. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters.

DISTRESS SIGNALS.

Art. 31. When a vessel is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately; viz.:—

In the daytime—

1. A gun or other explosive signal fired at intervals of about a minute;
2. The International Code signal of distress indicated by N. C.;
3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball;
4. A continuous sounding with any fog-signal apparatus.

At night—

1. A gun or other explosive signal fired at intervals of about a minute;
2. Flames on the vessel (as from a burning tar-barrel, oil-barrel, &c.);
3. Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals;
4. A continuous sounding with any fog-signal apparatus.

APPENDIX II.

LOCAL RULES OF NAVIGATION (*a*).

CANADA.

By the Canadian Order in Council of the 4th February, 1916, made under powers given by sect. 913 (b) of the Canada Shipping Act, Revised Statutes of Canada, chap. 113, new rules have been made for the navigation of the inland waterways of Canada. These rules supersede those adopted by the Order in Council of the 20th April, 1905, and amended by the Order in Council of the 18th May, 1906. Obedience to these rules is enjoined by sect. 916 of the Canada Shipping Act. Below the Victoria Bridge at Montreal navigation on the St. Lawrence is governed by rules identical with the International Regulations.

RULES FOR NAVIGATING THE GREAT LAKES.

Including Georgian Bay, their connecting and tributary waters and the St. Lawrence River as far East as the lower exit of the Lachine Canal and the Victoria Bridge at Montreal.

Preliminary.

In the following rules every steam vessel which is under sail and not under steam shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel.

The words *steam vessel* and *steamer* shall include any vessel propelled by machinery.

A vessel is *under way* within the meaning of these rules, when she is not at anchor, or made fast to the shore or aground.

LIGHTS.

Rule 1. The lights mentioned in the following rules and no others shall be carried in all weathers from sunset to sunrise. The word visible in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere.

Rule 2. Except in the cases hereinafter expressly provided for, a steam vessel when under way shall carry:

The lights prescribed by Art. 2, (a), (b), (c), (d), and

(e) A steamer of over one hundred and fifty feet register

No others to be carried.

Steam vessel under way.

(a) For a list of waters for which there are local rules, see above, p. 485. Those which are not contained in this Appendix will

be found set out in "The Rules of the Road at Sea," by Mr. H. Stuart Moore.

length shall also carry when under way an additional bright light similar in construction to that mentioned in subdivision (a), so fixed as to throw the light all around the horizon and of such character as to be visible at a distance of at least three miles. Such additional light shall be placed in line with the keel at least fifteen feet higher from the deck and more than seventy-five feet abaft the light mentioned in subdivision (a).

Steam vessel
towing.

Rule 3. A steam vessel having a tow other than a raft shall in addition to the forward bright light mentioned in subdivision (a) of rule two carry in a vertical line not less than six feet above or below that light a second bright light of the same construction and character and fixed and carried in the same manner as the forward bright light mentioned in said subdivision (a) of rule two. Such steamer shall also carry a small bright light abaft the funnel or after mast for the tow to steer by, but such light shall not be visible forward of the beam.

Steam vessel
towing raft.

Rule 4. A steam vessel having a raft in tow shall, instead of the forward lights mentioned in rule three, carry on or in front of the foremast, or if a vessel without a foremast then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so however that such height need not exceed forty feet, two bright lights in a horizontal line athwartships and not less than eight feet apart, each so fixed as to throw the light all around the horizon and of such character as to be visible at a distance of at least five miles. Such steamer shall also carry the small bright steering light aft, of the character and fixed as required in rule three.

Sailing vessel
under way.

Rule 5. A sailing vessel under way and any vessel being towed shall carry the side lights mentioned in rule two.

A vessel in tow shall also carry a small bright light aft, but such light shall not be visible forward of the beam.

Small vessels.

Rule 6. *Lights as prescribed by Art. 6.*

Vessel at
anchor.

Rule 7. *Lights as prescribed by Art. 11.*

Open boats.

Rule 8. Open boats shall not be obliged to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other slide; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up in addition if considered expedient.

Sailing
vessels to
show torch.

Rule 9. Sailing vessels shall at all times, on the approach of any steamer during the nighttime, show a lighted torch upon that point or quarter to which such steamer shall be approaching.

Tugs under
30 tons regi-
ster (net).

Rule 10. Tugs under 30 tons register (net) whose principal business is harbor towing, shall carry the red and green side lights carried by other steamers; and, at the foremast head, or, if the steamer has no foremast, then on top of the pilot

house, a white light so constructed as to show a uniform and unbroken light over an arc of the horizon of 20 points of the compass, and so fixed as to throw the light 10 points on each side of the vessel, namely, from right ahead to 2 points abaft the beam on either side, and of such a character as to be visible at a distance of at least 3 miles; and *when towing, except when towing a raft*, shall carry an additional white light of same character and construction as the headlight, and hung not less than 3 feet vertically above or below the headlight.

When towing a raft, the two headlights shall be carried in a horizontal line athwartships not less than 4 feet apart, each so fixed as to throw the light all around the horizon, and of such a character as to be visible at a distance of at least 3 miles.

Rule 11. Ferryboats propelled by steam or machinery shall carry the white light or lights and the coloured side lights required by these rules to be carried on steam vessels, except that *double-end ferryboats* shall carry a central range of clear, bright, white lights, showing all around the horizon, placed at equal altitudes forward and aft, also on the starboard side a green light, and on the port side a red light, of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least 2 miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of 10 points of the compass, and so fixed as to throw the light from right ahead to 2 points abaft the beam on their respective sides.

Ferryboats.

The green and red lights shall be fitted with inboard screens projecting at least 3 feet forward from the lights, so as to prevent them from being seen across the bow.

Rule 12. Canal boats when in tow of steam vessels shall carry lights as follows:

Canal boats in tow of steam vessels.

Canal boats when *towed astern of steam vessels and towed singly or tandem* shall each carry a green light on the starboard side, a red light on the port side, and a small bright white light aft.

When canal boats are *towed at a hawser in one or more tiers*, two or more abreast, the boat on the starboard side of each tier shall carry a green light on her starboard side, and the boat on the port side of each tier shall carry a red light on her port side, and each of the outside boats in the last tier shall also carry a small bright white light aft.

When a canal boat is *towed alongside* and on the starboard side of a steamer, the boat towed shall carry a green light on the starboard side; and when towed on the port side of a steamer, the boat towed shall carry a red light on the port side.

When *two canal boats are towed alongside of a steamer*, one on the starboard and one on the port side, the starboard boat shall carry a green light on the starboard side and the port boat shall carry a red light on the port side.

The *coloured side lights* referred to in these rules for canal boats in tow of steam vessels shall be fitted with inboard

screens, so as to prevent them from being seen across the bow, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least 2 miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of 10 points of the compass, and so fixed as to throw the light from right ahead to 2 points abaft the beam on either side. The minimum size of glass globes shall not be less than 6 inches in diameter and 5 inches high in the clear.

The *small bright white light* aft required to be carried on canal boats in tow shall not be visible forward of the beam.

Water craft
propelled by
hand power,
horse-power,
or by the
current of
the river.

Rule 13. *Any vessel propelled by hand power, horse-power, or by the current of the river*, navigating any bay, harbour, or river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbour, or river, except rafts and rowing boats under oars, shall carry one white light forward not less than 8 feet above the surface of the water, which light shall be carried, from sunset to sunrise, in a lantern so fixed and constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and of such intensity as to be visible on a dark night with a clear atmosphere at a distance of at least 1 mile.

Rowing boats under oars shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.

Rafts.

Rule 14. Rafts propelled by hand power, horse-power, or by the current of the river, or in tow, or which shall be anchored or moored in or near a channel or fairway of other vessels, shall carry lights as follows:

Rafts of one crib and not more than two in length shall carry one white light. Rafts of three or more cribs in length and one crib in width shall carry one white light at each end of the raft. Rafts of more than one crib abreast shall carry one white light on each outside corner of the raft, making four lights in all.

Bag or boom rafts navigating or anchored in the fairway of any bay, harbour, or river shall carry a bright white light at each end of the raft, and one of such lights on each side midway between the forward and after ends.

The *white lights* required by these rules for rafts shall be carried, from sunset to sunrise, in a lantern so fixed and constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and of such intensity as to be visible on a dark night with a clear atmosphere at a distance of at least 1 mile; which lights shall be suspended from poles of such height that the light shall be not less than 8 feet above the surface of the water.

Lights and
day marks for
vessels not
under com-
mand.

Rule 15. A vessel which from any accident is not under command shall carry at the same height as the white light mentioned in Rule 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, 2 red lights, in a vertical line, one over the other, not less than 6 feet apart, and of such a character as to be visible all around the horizon at a distance of at least 2 miles; and shall by day carry in a vertical line one

over the other not less than 6 feet apart, where they can best be seen, 2 black balls or shapes each 2 feet in diameter.

Rule 16. No master or pilot of any steam vessel shall authorize or permit to be carried, any light, electric or otherwise, not required by these rules, on the outside structure of the cabin or hull of the vessel that in any way will interfere with distinguishing the signal lights.

Unauthorized lights on steam vessels prohibited.

Rule 17. No master or pilot of any steam vessel shall flash or cause to be flashed the rays of the searchlight into the pilot house of any passing vessel.

Use of search-lights.

FOG SIGNALS.

Rule 18. A steam vessel shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, placed before the funnel not less than eight feet from the deck, or in such other place where the sound will not be intercepted by any obstruction and of such character as to be heard in ordinary weather at a distance of at least two miles, and with an efficient bell, and it is hereby made the duty of inspectors of steam vessels when inspecting the same to see that each steamer is furnished with such whistle and bell. A sailing vessel shall be provided with an efficient fog horn and with an efficient bell.

Efficient whistle and bell for steam and fog horn and bell for sailing vessels.

Whenever there is thick weather by reason of fog, mist, falling snow, heavy rainstorms, or other causes, whether by day or by night, fog signals shall be used as follows:

Signals in fog, &c.

(a) A steam vessel under way, excepting only a steam vessel with raft in tow, shall sound at intervals of not more than one minute three distinct blasts of her whistle.

(b) Every vessel in tow of another vessel shall, at intervals of one minute, sound four bells on a good and efficient and properly placed bell as follows: By striking the bell twice in quick succession, followed by a little longer interval, and then again striking twice in quick succession (in the manner in which four bells is struck in indicating time).

(c) A steamer with a raft in tow shall sound at intervals of not more than one minute a screeching or Modoc whistle for from three to five seconds.

(d) A sailing vessel under way and not in tow shall sound at intervals of not more than one minute—

If on the starboard tack with wind forward of abeam, one blast of her fog horn;

If on the port tack with wind forward of the beam, two blasts of her fog horn;

If she has the wind abaft the beam on either side, three blasts of her fog horn.

(e) Any vessel at anchor and any vessel aground in or near a channel or fairway shall at intervals of not more than two minutes ring the bell rapidly for three to five seconds.

(f) Vessels of less than ten tons registered tonnage, not being steam vessels, shall not be obliged to give the above-

mentioned signals, but if they do not they shall make some other efficient sound signal at intervals of not more than one minute.

(g) Produce boats, fishing boats, rafts, or other water craft navigating by hand power or by the current of the river, or anchored or moored in or near the channel or fairway and not in any port, and not otherwise provided for in these rules, shall sound a fog horn, or equivalent signal, at intervals of not more than one minute.

Speed to be moderate in fog, &c.

Rule 19. Every vessel shall, in thick weather, by reason of fog, mist, falling snow, heavy rainstorms, or other causes, go at *moderate speed*. A steam vessel hearing, apparently not more than four points from right ahead, the fog signal of another vessel shall at once reduce her speed to bare steerageway, and navigate with caution until the vessels shall have passed each other.

STEERING AND SAILING RULES.

Preliminary.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

Sailing vessels. Signals for steam vessels.

Rule 20. *As Art. 19 (a), (b), (c), and (d); (e) is omitted.*

Rule 21. In all weathers every steam vessel under way in taking any course authorized or required by these rules shall indicate that course by the following SIGNALS on her whistle, to be accompanied, whenever required, by corresponding alteration of her helm; and every steam vessel receiving a signal from another shall promptly respond with the same signal or sound the danger signal as provided in Rule 22:

One blast means, "I am directing my course to starboard," except when two steamers are approaching each other at right angles or obliquely, other than when one steamer is overtaking another, one short blast signifies intention of steamer which is to starboard of the other to hold course and speed.

Two blasts mean, "I am directing my course to port."

Danger signals in cases of doubt.

Rule 22. If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving the DANGER SIGNAL of five or more short and rapid blasts of the whistle; and if both vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerageway, and, if necessary, stopped and reversed, until the proper signals are given, answered, and understood, or until the vessels shall have passed each other.

Cross signals prohibited.

Rule 23. Steam vessels are forbidden to use what has become technically known among pilots as "CROSS SIGNALS"—that is, answering one whistle with two, and answering two whistles with one. In all cases, and under all circumstances, a pilot re-

ceiving either of the whistle signals provided in the rules, which for any reason he deems injudicious to comply with, instead of answering it with a cross signal, shall at once sound the danger signal and observe the rule applying thereto (Rule 22).

Rule 24. The SIGNALS FOR PASSING, by the blowing of the whistle, shall be given and answered by pilots in compliance with these rules, not only when meeting "head and head," or nearly so, but at all times when passing or meeting at a distance within a half mile of each other, and whether passing to the starboard or port.

When passing signals to be used.

Rule 25. When steamers are APPROACHING EACH OTHER "HEAD AND HEAD," OR NEARLY SO, it shall be the duty of each steamer to pass on the port side of the other; and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give, as a signal of his intention, one short and distinct blast of his whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his whistle, and thereupon such steamers shall pass on the port side of each other. But if the courses of such steamers are so far on the starboard of each other as not to be considered by pilots as meeting "head and head," or nearly so, the pilot so first deciding shall immediately give two short and distinct blasts of his whistle, which the pilot of the other steamer shall answer promptly by two similar blasts of his whistle, and they shall pass on the starboard side of each other: *Provided, however,* That in all NARROW CHANNELS where there is a current, and in the rivers Saint Mary, Saint Clair, Detroit, Niagara, and Saint Lawrence, when two steamers are meeting, the descending steamer shall have the right of way, and shall, before the vessels shall have arrived within the distance of one-half mile of each other, give the signal necessary to indicate which side she elects to take.

Rules and signals for steamers meeting end on.

Narrow channel rule.

In the night, steamers will be considered as meeting "head and head" so long as both the coloured lights of each are in view of the other.

Rule 26. Whenever a steamer is NEARING A SHORT BEND OR CURVE in the channel, where, from the height of the banks or other cause, a steamer approaching from the opposite direction can not be seen for a distance of half a mile, the pilot of such steamer, when he shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the whistle, which signal shall be answered by a similar blast, given by the pilot of any steamer within hearing that may be approaching on the other side, and within half a mile of such bend or curve. Should such signal be so answered by a steamer upon the farther side of such bend, then the usual signals for meeting and passing shall immediately be given and answered; but, if the first signal of such pilot be not answered, he is to consider the channel clear and govern himself accordingly.

Signals when approaching bends.

Rule 27. WHEN A STEAMER IS MOVED FROM ITS DOCK OR BERTH, and other steamers are liable to approach such steamer from any direction, such steamer and any approaching steamer shall

Rules and signals when steamer coming out of dock.

give the same signals as in case of steamers meeting at a bend; but immediately after clearing the dock or berth so as to be fully in sight they shall be governed by the rules for passing.

Rules and
signals when
steamer
overtaking
another.

Rule 28. WHEN ONE STEAMER IS OVERTAKING ANOTHER, and the pilot of a steamer which is astern shall desire to pass on the right or starboard hand of the steamer ahead, he shall give one short blast of the whistle, as a signal of such desire and intention, and shall put his helm to port; or if he shall desire to pass on the left or port side of the steamer ahead, he shall give two short blasts of the whistle as a signal of such desire and intention, and shall put his helm to starboard, and the pilot of the steamer ahead shall answer by the same signals; or if he does not think it safe for the steamer astern to attempt to pass at that point, he shall immediately signify the same by giving five or more short and rapid blasts of the whistle, and under no circumstances shall the steamer astern attempt to pass the steamer ahead until such time as they have reached a point where it can be safely done, when said steamer ahead shall signify her willingness by blowing the proper signals. The boat ahead shall in no case attempt to cross the bow or crowd upon the course of the passing steamer.

Every vessel coming up with another vessel from any direction more than two points abaft her beam—that is, in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's side lights—shall be deemed to be *an overtaking vessel*; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally passed and clear.

As by day the overtaking vessel can not always know with certainty whether she is forward of or abaft this direction from the other vessel she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.

Overtaking
in narrow
channels.

Rule 29. IN ALL CHANNELS LESS THAN FIVE HUNDRED FEET IN WIDTH, no steam vessel shall pass another going in the same direction unless the steam vessel ahead be disabled or signify her willingness that the steam vessel astern shall pass, when the steam vessel astern may pass, subject, however, to the other rules applicable to such a situation. And when steam vessels proceeding in opposite directions are about to meet in such channels, both such vessels shall be slowed down to a moderate speed, according to the circumstances.

Rules and
signals for
steamers
crossing.

Rule 30. When two steamers are APPROACHING EACH OTHER AT RIGHT ANGLES OR OBLIQUELY SO AS TO INVOLVE RISK OF COLLISION, other than when one steamer is overtaking another the steamer which has the other on her own port side shall hold her course and speed; and the steamer which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steamer, or, if necessary to do so, slacken her speed or stop or reverse. The steamer having the other

on her own port bow shall blow one blast of her whistle as a signal of her intention to cross the bow of the other, holding her course and speed, which signal shall be promptly answered by the other steamer by one short blast of her whistle as a signal of her intention to direct her course to starboard so as to cross the stern of the other steamer or otherwise keep clear.

If from any cause whatever the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steamers shall be stopped, and backed if necessary, until signals for passing with safety are made and understood.

Rule 31. *As Art. 18, without the explanatory paragraphs.*
 Rule 32. *As Art. 19.* Rule 33. *As Art. 20.* Rule 34. *As Art. 21, without the note.* Rule 35. *As Art. 23.* Rule 36. *As Art. 24, without the explanatory paragraphs.* Rule 37. *As Art. 27.* Rule 38. *As Art. 29.*

(Diagrams are given to illustrate the working of the system of coloured lights and pilot rules.)

Rule 39. No licensed officer in charge of any steamer shall authorize or permit unnecessary sounding of the steam whistle.

Rule 40. *As Art. 31.*

Unnecessary
sounding of
the whistle.
Distress
signals.

RULES CONCERNING MOTOR BOATS.

Preliminary.

In the following rules the words "motor boat" shall include every vessel propelled by machinery and not more than sixty-five feet in length except tug-boats and tow-boats propelled by steam. The length shall be measured from end to end over the deck excluding sheer.

Rule 41. That motor boats subject to the provision of these rules shall be divided into classes as follows:

Classes of
motor boats.

Class one. Less than twenty-six feet in length,

Class two. Twenty-six feet or over and less than forty feet in length.

Class three. Forty feet or over and not more than sixty-five feet in length.

Rule 42. That every motor boat in all weathers from sunset to sunrise shall carry the following lights, and during such time no other lights which may be mistaken for those prescribed shall be exhibited.

Lights for
motor boats.

(a) Every motor boat of class one shall carry the following lights:

First. A white light aft to show all around the horizon.

Second. A combined lantern in the fore part of the vessel and lower than the white light aft showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(b) Every motor boat of classes two and three shall carry the following lights:

First. A bright white light in the fore part of the vessel as

near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side. The glass or lens shall be of not less than the following dimensions:

Class two. Nineteen square inches.

Class three. Thirty-one square inches.

Second. A white light aft to show all around the horizon.

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The glasses or lenses in the said side lights shall be of not less than the following dimensions on motor boats of—

Class two. Sixteen square inches.

Class three. Twenty-five square inches.

On and after March first, nineteen hundred and seventeen, all glasses or lenses prescribed by paragraph (b) of Rule 42 shall be fresnel or fluted. The said lights shall be fitted with inboard screens of sufficient height and so set as to prevent these lights from being seen across the bow and shall be of not less than the following dimensions on motor boats of—

Class two. Eighteen inches long.

Class three. Twenty-four inches long: *Provided*, That motor boats as defined in these Rules, when propelled by sail and machinery or under sail alone, shall carry the coloured lights suitably screened but not the white lights prescribed by this Rule.

Whistles, fog
horns and
bells for
motor boats.

Rule 43. (a) Every motor boat under the provisions of these Rules shall be provided with a whistle or other sound-producing mechanical appliance capable of producing a blast of two seconds or more in duration, and in the case of such boats so provided a blast of at least two seconds shall be deemed a prolonged blast within the meaning of these Rules.

(b) Every motor boat of class two or three shall carry an efficient fog horn.

(c) Every motor boat of class two or three shall be provided with an efficient bell, which shall be not less than eight inches across the mouth on board of vessels of class three.

Rule 44. That every motor boat and also every vessel propelled by machinery other than by steam, more than sixty-five feet in length, shall carry ready for immediate use the means of promptly and effectually extinguishing burning gasoline.

Commence-
ment.

Rule 45. The foregoing Rules shall be in full force and effect on and after the first day of March, nineteen hundred and sixteen, and shall supersede all Rules of the Road for the Great Lakes, etc., previously adopted.

THE CLYDE.

Bye-laws of 6th August, 1889, made under 21 & 22 Vict. c. 149 (Local), and 50 Vict. sess. 2, c. 8 (Local) (b).

1. (*Vessels over sixty tons to have pilot.*)
2. (*In daytime one hand, at night and in fog two hands, on the look-out.*)
3. (*Steam vessel or dredger turning or unable to keep out of the way to sound four or more blasts or strokes of her bell; thereupon the other vessel to keep out of the way.*)
4. (*Yards to be peaked; bowsprits and jibbooms run in or topped.*)
5. (*Anchors to be laid so as not to interfere with fairway. Bowsprits and jibbooms of vessels aground to be rigged in.*)
6. (*Vessels not to anchor or moor above Bowling, or inside the river walls.*)
7. (*Small boats prohibited in certain parts of the river.*)
8. (*Scows to have coamings eighteen inches high.*)
- * * * * *
11. (*At night and in dense fog speed not to exceed four miles an hour.*)
- * * * * *

14. When steam vessels proceeding in opposite directions are approaching one another, each shall, when within fifty yards of the other, slow her engines, and each shall alter her course to starboard, so that each shall pass to the port side of the other.

Steam vessels meeting.

15. When two steam vessels are proceeding in the same direction, but with unequal speed, the slower vessel shall, when about to be overtaken, be kept sufficiently to the left or port side of the channel as to leave a free passage for the faster vessel, and shall be slowed, and, if necessary, the engines stopped, as soon as the faster vessel comes within fifty yards of her; and the engines of the faster vessel shall also be slowed, when within fifty yards of the slower vessel, until the latter shall be passed; and it shall be sufficient intimation to the slower vessel of the faster vessel's purpose of passing her that the bell of the faster vessel be twice rung and her engine whistle be twice sounded; but the faster vessel shall not attempt to pass the slower until the latter shall have given her room to pass safely. Failing that being done, the person in charge of the faster vessel shall report the offence to the pilot board in order that such offence may be dealt with.

Steam vessel overtaking another steam vessel.

Note.—The faster vessel should not claim to pass the slower at a narrow or otherwise difficult part of the river, and only when the course is free of other passing vessels.

16. A steam vessel meeting or overtaking any sailing vessel,

Steam vessel meeting or

(b) The Regulations apply within the limits in which these bye-laws are in force. *Little v. Burns* (1881), 9 R. (Ct. of Sess.), 118; *The Nerano v. The Dromedary* (1895), 22 R. (Ct. of Sess.), 237. The Firth of Clyde, at any rate

to as far down as a line drawn between the Clock Lighthouse and the Gantocks Beacon, is a narrow channel. *Clyde Navigation Trustees v. Wilhelmssen* (1915), S. C. 392.

overtaking sailing vessel.

or tug with sailing vessel or timber raft in tow, shall slow her engines within fifty yards of such vessels, and shall continue slowing until she shall have passed the same; and when about to pass any vessel aground or at anchor shall slow her engines at least 150 yards from such vessel, and so continue until she shall have passed the same.

Light on overtaken vessels.

17. Every vessel when being overtaken by another vessel after dark shall show from her stern a white light until the other vessel shall have passed.

Vessels coming out of dock.

18. Vessels coming out of dock shall signify the same by a prolonged blast of the steam whistle of not less than five seconds' duration, and in cases where a vessel is not under steam the tug boat in attendance shall make the same signal.

Steam vessel crossing river.

19. Every steam vessel under her own steam, crossing from one side of the river towards the other side, shall keep out of the way of vessels navigating up and down the river.

20. (*Steamships to go dead, slow past dredging machines, diving bells, and river works.*)

21. (*Steamships to go dead (c) slow past notice boards to that effect.*)

22, 61, and 102. (*Steamships to go dead slow in certain parts of the river.*)

23. (*Tugs not to tow vessels alongside or abreast of each other, except certain small craft; tow not to exceed 160 yards in length.*)

25. (*Order of berthing of vessels arriving together at a wharf.*)

* * * * *

Lights.

32. Every vessel when on the river shall conform to the Board of Trade Rules with regard to lights; and every vessel moored to the buoys shall, between sunset and sunrise, have a white light exhibited in a globular lantern of not less than eight inches in diameter, placed in a conspicuous position, and raised at least twelve feet above the deck, so as to show a clear, uniform, and unbroken light all round the horizon.

33. (*Sunken vessel to be lit by two red lights and a white light. A look-out man to be on board or in a boat, and to show red flags in daytime.*)

As to Launches.

34. (*Two small boats to lie in the river 200 yards above and below the launch; pilot of launch to show red flag with "launch" in white letters five minutes before launch; the boats thereupon to show similar flags; no craft in the river to pass boats so signalling until launch is over; if launch delayed, pilot to show white flag and boats to withdraw their red flags; twenty-four hours' notice of launch to be given to harbour-master; delay of traffic by launch.*)

110. (*Horse boats and steam ferry boats to carry white light twelve feet above the deck.*)

Lights on dredgers.

By Order in Council of 23rd February, 1891, it was directed that:—
Every dredger moored in the River Clyde, within the juris-

(c) *I.e.*, not exceeding five miles an hour.

diction of the Clyde Trustees, shall, between sunset and sunrise, exhibit three bright lights from globular lanterns of not less than eight inches in diameter, placed in triangular form, not less than six feet apart, on the top of the framework athwartships, and of sufficient power to be distinctly visible, with a clear atmosphere, on a dark night at a distance of at least one mile.

By an order of 24th November, 1894, signal regulations for vessels entering and leaving Queen's Dock and Cessnock Dock were confirmed by the Board of Trade.

HUMBER, TRENT, OUSE.

Under sect. 421 of the Merchant Shipping Act, 1894, rules have been made for the navigation of the Humber, Trent and Lower Ouse (*d*) by Orders in Council dated 19th July, 1910, by which all previous rules were revoked. The rules for the Lower Ouse are, with the necessary alterations of names and authorities, identical with those for the Humber. The rules for the Trent are supplementary to and are directed to be read with those for the Humber, and with the Humber bye-laws made under the Humber Conservancy Act, 1879. The material portions of the Humber and Trent rules and of the Humber bye-laws are as follows:—

HUMBER RULES, 1910.

3. In interpreting these Rules the following terms shall have the meanings hereby assigned to them that is to say:—

Interpretation
clause.

- (b) The term "the Humber" or "river" shall mean and include the river Trent below the south side of the stone bridge at Gainsborough and the river Humber and the estuary thereof from the confluence of the rivers Ouse and Trent to the sea and all navigable havens and creeks of the river Trent below the south side of the said stone bridge and of the river Humber or the estuary thereof wherein the tide flows and re-flows but shall not include any part of the Old Harbour or Haven at Hull.
- (c) The term "Vessel" shall include any ship lighter dredger keel sloop barge yacht launch boat wherry raft float of timber or craft whatever whether navigated by steam or otherwise.
- (d) The term "Dumb-craft" shall include canal boats mud barges or other barges lighters vessels without masts and vessels without either deck or mast sloops and keels with their masts lowered and rafts.
- (e) The term "Steam Vessel" shall include any vessel propelled by machinery.
- (f) The term "Master" when used in relation to any vessel shall mean any person whether the Owner Master or other person lawfully or wrongfully having or taking

(*d*) As to the practice of dredging up Goole Reach stern first with anchor down, see *The Frankfort*,

(1910) P. 50; as to keels drifting up, see *The Ralph Greyke* (1886), 6 Asp. M. C. 19.

the command charge or management of the vessel for the time being.

* * * * *

All vessels to obey Rules.

4. All vessels while navigating or anchored or moored in the river shall observe and obey the Regulations for Preventing Collisions at Sea (hereinafter referred to as "the General Regulations") made in pursuance of and for the time being in force under the Merchant Shipping Act 1894 or any subsisting statutory modification thereof with the exceptions and additions made in the following Rules (e).

Lights for dumb-craft.

5. Dumb-craft may between sunset and sunrise in lieu of the lights prescribed by the General Regulations exhibit in the fore-part of the craft a white light distinctly visible on all sides not less in height above deck or above any cargo or other obstruction on the deck:—

(1) When at anchor than five feet;

(2) When being towed than three feet.

(3) In any case the sternmost of the craft towed shall also exhibit a white light at the stern and when craft are being towed in lines abreast then the sternmost of each line shall shew a white light at the stern.

Light for passenger steamer.

6. A passenger steamer plying on the river while under way and in motion shall in all weathers between sunset and sunrise carry at the stern a bright white light in a lantern so constructed fitted and screened as to show an unbroken light over an arc of the horizon of twelve points of the compass viz.: for six points from right aft on each side of the steamer and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least one mile.

Dredgers' lights and signals.

7. (1) A dredger other than a grab dredger when at work or in position for working shall carry the following lights and signals viz.:—

Lights between sunset and sunrise:—

(a) FORWARD.—On the forward part of the dredger at a height of not less than twenty and not exceeding forty feet above the hull a white light in a lantern so constructed and placed as to shew a clear uniform and unbroken light visible all round the horizon at a distance of at least one mile.

(b) AMIDSHIPS.—Three similar lights (two red and one white) in triangular form not less than eight feet apart at right angles to the keel with the apex marked by one of the red lights uppermost and the white light indicating the side of the dredger on which vessels may safely pass the base of the triangle to be not less than 3 feet above the highest point of the main framework.

(e) Wherever there is an eddy above and west of Whitton Ness during flood tide, it is neglect of a seamanlike precaution for a down-coming vessel not to go slow and let an up-coming vessel clear the place of difficulty before passing

her: *The Exardian*, (1911) P. 92. The entrance to the Humber between the Bull and Clee Ness buoys and the buoys on the north side is a narrow channel within the meaning of Art. 25; *The Ashton*, (1905) P. 21.

- (c) Aft.—One similar white light at or near the stern of the dredger and at such a height that it shall not be less than fifteen feet lower than the forward light.

Every other light in use on the dredger shall so far as reasonably practicable be so screened as not to be seen except from the deck of the dredger.

Signals between sunrise and sunset:—

AMIDSHIPS.—Three balls or shapes (two red and one black) of not less than two feet in diameter in triangular form in the same positions as those described in these rules for the lights to be placed amidships on a dredger the black ball to indicate the side of the dredger on which vessels may safely pass.

(2) A dredger when not at work or in position for working shall carry the ordinary lights and signals prescribed by the General Regulations and by these Rules.

8. A vessel taking the ground except when lying alongside any quay jetty wharf or landing place shall during the day so long as the said vessel shall remain aground exhibit two balls on the foremast in a vertical line one above the other three feet apart not less than fifteen inches diameter and at least twenty feet above the water.

Signal for
vessel
aground.

9. A vessel when at anchor except when lying alongside any quay jetty wharf or landing place shall between sunrise and sunset carry in the forward part of the vessel at a height of not less than twenty and not exceeding forty feet above the hull a black ball not less than fifteen inches in diameter provided that in the case of a vessel within Article 7 of the General Regulations such black ball may be carried at a height above the gunwale not less than nine feet.

Signal for
vessel at
anchor.

10. A steam vessel belonging to the Board which may for the time being be used exclusively for the taking on board or landing of Pilots and not at anchor or moored shall between sunset and sunrise in addition to the lights prescribed by the General Regulations for a steam vessel under way carry at a distance of three feet below her white masthead light a red light visible all round the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles. When engaged on her station on Pilotage duty and at anchor or moored she shall carry in addition to the light required for vessels at anchor the red light above mentioned but not the coloured side lights. When not engaged on her station on Pilotage duty she shall carry the same lights as other steam vessels.

Lights for
steam pilot
vessel.

11. A steam vessel with steam up crew on board and ready to leave when lying afloat alongside any quay jetty wharf landing place or another vessel shall between sunset and sunrise carry the lights prescribed by Article 2 of the General Regulations and when casting off either by day or by night shall blow her whistle.

Lights and
signal for
steam vessel
lying along-
side quay.

Lights and signals to mark position of wrecks.

12. A vessel employed to mark the position of a wreck or other obstruction shall exhibit

By DAY—Three balls on a yard twenty feet above the water two of the said balls placed vertically on the side on which navigating vessels may safely pass and one on the other side.

By NIGHT—Three white fixed lights similarly arranged but not the ordinary riding light.

Vessels navigating the river shall pass on that side of her on which the two balls or two lights are shewn.

Signal for vessel sweeping for anchors.

13. A vessel when engaged in sweeping for anchors or other obstructions shall fly at the masthead a red flag not less than four feet square.

Signals for vessel turning or not under command.

14. When a steam vessel is commencing to turn round or for any reason is not under command and cannot get out of the way of an approaching vessel she shall signify the same by four short blasts of the steam whistle in rapid succession and it shall thereupon be the duty of the approaching vessel to keep out of the way of the steam vessel so situated. A steam vessel commencing to turn round shall immediately before giving the signal referred to in this Rule indicate the direction in which she proposes to turn by sounding the one short blast or two short blast signals prescribed by Article 28 of the General Regulations. A vessel not under command shall as speedily as possible get fore and aft the river head to tide and under command. If a sailing vessel or any other craft in tow is situated as above mentioned the said whistle signals shall be made by the tug.

Sound signal for vessel aground.

15. A vessel whilst aground shall on the approach of any other vessel within a mile sound her whistle or fog-horn at intervals of five minutes until the approaching vessel has passed clear giving on each occasion two long blasts and a short intermediate one. A vessel aground in a fog shall ring her bell every two minutes but on hearing the whistle or fog-horn of an approaching vessel shall make the aforementioned signal with her whistle or fog-horn.

Vessel requiring services of tug.

16. A vessel requiring the services of a tug shall give five short blasts on the whistle. If the vessel is aground the blasts shall be given at intervals between the grounding signals.

Pilot signals.

17. In addition to any other fog signal required by law in fog a signal consisting of four prolonged blasts with the whistle shall be sounded every three minutes as the distinguishing signal of a Steam Pilot Boat or Pilot Launch and in the case of a Sailing Pilot Boat a gong sounded at frequent intervals which shall never exceed three minutes. A vessel in fog requiring the services of a Pilot or wishing to drop one may make the same signal with her whistle.

Authorised sound signals only to be given.

18. No vessel shall give any signals with the whistle save and except such signals as may be authorised by these Rules or by the General Regulations. Private whistle signals are absolutely forbidden except such as may be from time to time authorised by the Board.

19. No vessel unless compelled by stress of weather fog or other emergency shall anchor in the fairway of the river in such a position as to unnecessarily obstruct impede or interfere with passing vessels. A vessel which by stress of weather fog or other emergency may be compelled to anchor in any such prohibited position shall with the least possible delay remove therefrom.

Vessel not to anchor in fairway.

20. A vessel when so required by a Conservancy Official shall remove from the anchorage where she may be and proceed with the least possible delay to another place of anchorage as ordered by such Official and if directed by him shall be moored with two anchors.

Vessel to remove from anchorage when required.

21. No vessel shall be allowed to drift otherwise than under control or to drift athwart or abreast.

Vessel not to drift.

22. A vessel shall be navigated with care and caution and at such a speed and in such a manner as not to endanger the lives of or cause injury to persons or involve risk of collision by causing a swell or endanger the safety of other vessels or moorings or cause damage thereto or to the river banks. Special care and caution shall be used in navigating such vessel where there is much traffic and when passing vessels employed in dredging or removing sunken vessels or other obstructions. If the safety of any vessel or moorings is endangered or damage is caused thereto or to the river banks by a passing steam vessel the onus shall lie upon the Master or Owner of such vessel to shew that she was navigated with care and caution and at such a speed and in such a manner as directed by these Rules.

As to speed.

23. When sunken vessels and other obstructions are being lifted or removed by any wreck-removal craft or appliances or when buoys are being laid or removed or moorings are being drawn or fixed by any of the vessels belonging to the Board or when any craft or appliances belonging to or employed by the Board are at work as aforesaid the propelling engines of every vessel shall be eased and all vessels shall be kept well clear when approaching such wreck-removal craft or other craft or appliances and every vessel fitted with propelling power shall go dead slow from a point at least three hundred yards before reaching such wreck-removal craft or other craft or appliances and so continue for one hundred and fifty yards after passing them. While the said wreck-removal craft or other craft or appliances are at work a red flag shall be hoisted on board during the day and three red lights in triangular form at right angles to the keel with the apex uppermost at night.

When wrecks being removed passing vessels to go dead slow.

24. Dumb craft shall be exempted from compliance with Rules Nos. 8, 9 and 15.

Signal and lights for wreck-removal craft.

25. These Rules shall not apply to any harbour basin or dock or the Old and New Creeks at Hull (f) nor shall the powers

Exemptions.

(f) Rules for the River Hull were made by Order in Council of the 15th February, 1909, by

which vessels are directed to obey the orders of the harbour-master, vessels meeting above Scale Lane

of any Conservancy Official thereunder be exercised so as to interfere with any directions which the dockmaster of any such harbour basin or dock or the Old and New Creeks at Hull has statutory power to give.

THE TRENT RULES, 1910.

Definition.	"The River" shall mean the River Trent between the Stone Bridge at Gainsborough and Trent Falls.
All vessels to obey Rules.	3. All vessels while navigating or anchored or moored in the River Trent as above defined shall observe and obey the Regulations for Preventing Collisions at sea made in pursuance of and for the time being in force under the Merchant Shipping Act 1894 or any subsisting statutory modification thereof, with the exceptions and additions made in "The Humber Rules 1910" and in the following Rules.
Vessels! anchored for dredging or fishing not to obstruct navigable channel.	4. A vessel anchoring for the purpose of dredging for sand or ballast or fishing shall be so anchored or moored that no part of such vessel or her gear shall obstruct the navigable channel of the River. Such vessel as aforesaid shall lie singly and when more than one in a line astern of the foremost and not abreast of each other and (as near as may be) parallel with the banks and shall have her anchor buoyed.
Vessel lying at works or anchored for fishing to be made fast to shore.	5. A vessel lying at anchor off any works or wharves and waiting to load or discharge cargo at such works or wharves and a vessel anchored for the purpose of fishing shall have a rope or ropes made fast ashore to hold her steady to the bank except when prevented by Aegre or other unavoidable circumstance.
Prohibited anchorages.	6. No vessel unless loading or discharging cargo shall lie at anchor in any of the Bights hereunder specified after the tide has flowed to a sufficient extent to enable her to get clear of such Bight namely:— (1) Morton Bight. (2) Stockwith or Ropery Bight. (3) Jenny Hurn Bight. (4) Kelfield Bight. (5) Boggard Hall Bight between Burringham Ferry and the Ironstone Wharf. (6) Upper part of Amcott's Hook Bight near Amcott's Sluice.
Anchorages prohibited for purpose of fishing.	7. No vessel shall anchor for the purpose of fishing in any of the following roadsteads, viz.:— Flixborough Stather Road; The lower part below the Stone Heap of Burton Stather Road; Cliff End Road;

Staithway are to keep to starboard so as to pass port to port, and where there is no room for meeting vessels to pass, the vessel navi-

gating against the tide is to give way to the vessel navigating with the tide.

nor in that part of the river which lies between the upper part of Boggard Hall Bight above Keadby Bridge and the north end of the lower part of Amcott's Hook.

8. No vessel employed for the purpose of fishing shall exceed 20 tons burthen. Fishing vessel not to exceed twenty tons burthen.

9. No vessel shall be anchored or moored in any part of the River (whether hereinbefore mentioned or not) so as to be an obstruction to the navigation thereof for a longer time than is necessary for her removal on the tide following her arrival. Vessel not to cause obstruction.

10. A vessel shall not tow at any one time so many vessels in a line as that the stern of the hindmost vessel is distant more than 800 feet from the stern of the towing vessel. Length of tow.

11. A vessel shall not tow at any time more than eight keels or other vessels between Keadby Bridge and Trent Falls unless in the opinion of the master of the tug circumstances render it necessary to do so in which case the tug may tow nine keels or other vessels but they shall then be towed in three lines. In any other case below Keadby Bridge the vessels shall be towed in two lines. Length of tow between Keadby Bridge and Trent Falls.

12. A vessel shall not tow at any time more than six keels or other vessels between Gainsborough and Keadby Bridges. Between Gainsborough and Keadby Bridges.

13. *Vessel moored not to obstruct navigation.* 14. *Landing place or other work submerged at high water to be marked and lighted.* 15. *Ferry boat chains to be slackened down.*

16. Nothing in these Rules shall be deemed to take away or affect any statutory rights possessed by or given to dock-masters, harbour-masters or pier-masters within the prescribed areas in which they exercise their respective statutory jurisdictions. Exemptions.

HUMBER BYE-LAWS.

1. The Master of every Vessel and the Owner thereof shall severally be responsible for the due performance and observance of such of the following Bye-laws as shall apply to such vessel or the Master or Owner thereof and when any vessel shall be under the direction of a Pilot such Pilot shall also be responsible for such performance and observance provided that if such Pilot shall be a duly licensed Pilot whom the Master or Owner is bound by law to employ neither the Master nor the Owner shall be liable to any penalty or be responsible (except in damages for injury done) for any non-performance or non-observance of any Bye-law arising from the actual neglect or default of such Pilot. Responsibility for observance of bye-laws.

2. (*Fines for breaches of bye-laws.*)

3. A competent person shall at all times be on board every Vessel lying in the river or alongside any pier jetty dockwall or landing place therein whether such vessel or craft be serviceable or not except on such descriptions of vessels and in such places as may be sanctioned by the Board who may from Competent person to be on board vessel.

time to time alter such descriptions of vessels and places but only after hearing any parties interested. A list of such descriptions of vessels and places shall be kept at Hull, Goole, Grimsby, Keadby and Gainsborough, and be open to the inspection of the public.

Mooring of vessel.

4. A Vessel at anchor or lying at any quay wharf pier jetty mooring or landing shall at all times be kept properly and effectually secured or made fast.

Vessel not to obstruct landing place.

5. No Vessel or obstruction shall lie or be placed made fast or moored alongside any pier or quay or in the river so as to prevent the free transit of any Ferry-boat or any other Vessel passing to or from any public or private landing place.

Meaning of dumb-craft.

6. Every Dumb-craft except rowing-boats and canoes shall when under way have on board at least one man competent for the navigation thereof and every such craft exceeding fifty tons burden shall when under way have on board at least one additional person to assist in the navigation thereof except when such craft is being towed by a Steam Vessel or is being moved between any Vessels or places not exceeding two hundred yards from one another.

Vessel to be properly manned and a proper look-out to be kept.

7. A Vessel (except Dumb-craft) while under way shall be manned by a competent Master and if over 10 tons burden shall also have a sufficient number of able bodied and experienced men and shall at all times have a good and efficient look-out.

Vessel to have anchor ready and to leave buoy to mark slipped anchor.

8. A Vessel (except craft under ten tons measurement and Dumb-craft being towed from dock to dock or to and from the dredging or depositing grounds) shall keep an anchor and cable ready for letting go in case of emergency and any vessel slipping or parting from her anchor shall when practicable leave a buoy to mark its position.

* * * * *

Marking and lighting of jetties, &c.

18. Any pier jetty or dock wall constructed upon the Humber shall be lighted for navigational purposes marked or numbered in such reasonable manner as the Board may from time to time direct. Any jetty less than four feet above high water ordinary spring tides shall have a beacon at the river end.

Landing place or other work submerged at high water to be marked and lighted.

19. The river extremities of every landing place pier jetty stage piling groyne stoneheap or other work on the Humber if submerged or partly submerged at high water shall be marked by day and lighted by night in such manner as the Board may from time to time direct.

Lights detrimental to navigation to be screened.

20. Such lights on shore as may in the opinion of the Board (or in the event of dispute in the opinion of a person to be appointed by the Board of Trade) be likely to cause difficulty or danger to persons navigating the river shall at the request of the Board be screened or obscured in such reasonable manner as the Board may from time to time direct.

* * * * *

MANCHESTER SHIP CANAL (*g*).

The rules in force are dated November, 1903. It is understood that they will soon be revised.

1. Vessels to be at owners' risk. 2. Anchors, sails, spars, &c. to be stowed. 3. Cargo and draft of water to be declared.

4. The maximum speed in the canal must not exceed six miles an hour, unless a special permit has been obtained from the company's General Superintendent.

5. Sails not to be used. 6. Vessels to be navigated with care, especially when approaching locks or dredgers. 7. Burden of proof on vessel doing damage. 8. Vessels to have their own ropes and fenders. 9. Signals. 10. Signals at swing bridges. 11. Signals at locks. 12. Vessels not to impede entrances to locks. 13. Lockmaster to direct vessels in locks. 14. Engines not to be used when moored in locks.

15. When vessels proceeding in opposite directions are approaching one another, each vessel must be steered as closely as possible with safety to her own starboard side of the canal, so that they may pass on the port side of each other; each vessel must reduce her speed to dead slow, or, if necessary, stop altogether, so as to pass in safety. When vessels meet in the tidal portion of the canal when the tide is running, the vessel proceeding against the tide must give way, or tie up if necessary, until the vessel coming with the tide or stream has passed, and when vessels meet in the non-tidal portion of the canal, the vessel bound up the canal must give way, or tie up if necessary, until the vessel coming down has passed.

Vessels
meeting.

16. When one vessel is following another without the intention of passing, she must not approach nearer to the leading vessel than one furlong or eighth of a mile.

Vessels
following.

17. No vessel must overtake another within half a mile of any lock or swing bridge. Every vessel when being overtaken must keep as far as possible to starboard side of mid-channel; and if after sunset, a white light must be shown over the stern. The vessel overtaking must pass on the port side of the vessel overtaken.

Vessels
overtaking.

18. Wherever the slopes of the canal will permit, small craft must be kept entirely out of the track of sea-going vessels.

Small craft.

19. Whenever vessels under way may require to depart from the course laid down for them in these regulations for the purpose, for instance, of proceeding to or from any quay, wharf, works, or lock, or for any other reason, the responsibility of doing so in safety, having regard to passing traffic and to works in operation or otherwise, will rest upon the person in charge and the owners of such vessel (*h*).

Vessels
crossing.

20. Bridge gauges; headway. 21. Dredgers working to hoist black ball or white light on the side clear for traffic; red light on the other side; dredgers moored to show ordinary lights. 22. Hopper barges not to open doors. 23. Obstructions to be reported. 24. Rubbish not to be discharged. 25. Materials accidentally discharged to be reported. 26. Notice

(*g*) Certain bye-laws made were not confirmed by the Board of Trade as required by sect. 198 of the Manchester Ship Canal Act. It appears that the Sea Rules do

not apply to the Manchester Ship Canal. Cf. *The Hare*, (1904) F. 381.

(*h*) See *The Halfdan*, Ship. Gaz. Feb. 22nd, 1908.

to be given of vessels sunk. 27. Vessels to be properly ballasted. 28. Vessels to be moored in proper places; never to moor or anchor in fairway; signals and other precautions when moored. 29. Watchman to be on board. 30. Vessels to be moored at orders of company's servants. 31. Towing not allowed except by order; length of tow line and of tows. 32. Fires and lights. 33. Explosives. 34. Timber not to be floated. 35. Discharging cargo. 36. Gangways. 37. Quays to be kept clear of cargo. 38. Nuisances. 39. Dogs and dangerous animals. 40. Smoking. 41. Defacing dock premises. 42. Horses and vehicles. 43. Cranes. 44. Labourers. 45. Passes. 46. Notice of leaving berth. 47. Obstructing officers.

The schedule of signals provides that: 1. Lights are to be in accordance with the sea regulations. 2. Vessels are to whistle when approaching others. 3. Or when overtaking others. 4. If a vessel is obliged to stop when another is following, she is to give three blasts, one short, one long, and one short. 5. When approaching a lock or swing bridge vessels are to whistle, when from Manchester, one long and one short blast; when from Eastham, one long blast; no whistle to be sounded if, by day, the lock or bridge signals are against the ship. 6. Fog signals to be according to the sea regulations. 7. If a vessel is aground or disabled, by day, three black balls or shapes vertically, and bell to be rung; by night, three red lights vertically, and bell to be rung.

There are bye-laws for vessels passing through the estuary and other locks, and bye-laws for pilots and pilotage. Pilotage is not compulsory.

MERSEY.

Mersey.

The following rules were made by Order in Council of 11th October, 1912, under 60 & 61 Vict. c. 21 (Mersey Channels Act, 1897), and the Merchant Shipping Act, 1894:—

RULES concerning the lights or signals(i) to be carried, and concerning the steps for avoiding collision to be taken, by vessels navigating the River Mersey and the sea channels or approaches thereto, between the Rock Lighthouse and the furthest point seawards to which such sea channels or approaches respectively are for the time being buoyed on both sides.

General regulations to be followed.

1. Every vessel, of whatever description, used in navigation, when in any part of the River Mersey, or in the sea channels or approaches thereto as above defined shall, on and after the 11th day of October, 1912, observe and obey the "Regulations for preventing Collisions at Sea" made in pursuance of the "Merchant Shipping Act, 1894," hereinafter called "the General Regulations," which may from time to time be in force, with the exceptions and additions mentioned in the following rules (k).

Lights for vessel at stage.

2. A vessel when lying at any stage shall carry the lights prescribed by Arts. 2 and 5 of the general regulations and Rule 5 hereof.

Lights for vessel towed.

3. A vessel being towed shall, in addition to the lights prescribed by Art. 5 of the general regulations, carry the white

(i) The Mersey rules were held deficient in not containing some rule prescribing signals for craft turning. *The Adriatic* (1914), 30 T. L. R. 593.

(k) The numbers quoted in these rules refer to the articles in the general regulations made on the 13th October, 1910.

light at her stern prescribed by Rule 5 hereof, and if such vessel is a steam vessel with steam up she shall, although being towed, also carry the masthead light prescribed by Art. 2 (a), and may carry the additional light allowed by Art. 2 (e) of the general regulations.

4.—(a) A steam vessel when towing another vessel or vessels or when attached for the purpose of towing or manœuvring such vessel or vessels, shall carry the compulsory lights prescribed by Art. 3 of the general regulations, and such steam vessel when towing or attached as aforesaid to a vessel of 450 feet or upwards in length shall carry the additional bright white light prescribed by the said Art. 3 (l). Lights for steam vessel towing.

(b) Further, a steam vessel when towing or attached as aforesaid shall carry abaft the funnel or after-mast a small white light fixed and carried in a lantern so constructed, fitted and screened that it shall throw an unbroken light over an arc of the horizon of 12 points of the compass, viz., for 6 points from right aft on each side of the vessel, and such steam vessel if less than 160 feet in length shall not carry the stern light prescribed by Rule 5 hereof, but if she is 160 feet or upwards in length she may carry such stern light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

5. In lieu of Art. 10 of the general regulations, a vessel under way shall carry at her stern a white light. The light shall be fixed and carried in a lantern so constructed, fitted and screened that it shall throw an unbroken light over an arc of the horizon of 12 points of the compass, viz., for 6 points from right aft on each side of the vessel, so as to be visible at a distance of at least a mile. Such light shall be carried as nearly as practicable on the same level as the side lights (m). Stern lights.

Provided that a vessel within Art. 7 of the general regulations (viz., steam vessels of less than 40, and vessels under oars or sails of less than 20, tons gross tonnage respectively, and rowing boats), shall not be obliged to carry the light prescribed by this rule, but if they do not carry such light they shall, when being overtaken by another vessel, show from the stern a white light or a flare up light as required by Art. 10 of the general regulations.

6. In lieu of Art. 11 of the general regulations, a vessel when at anchor, except when lying at any stage, shall carry in the forward part of the vessel, at a height of not less than 20, and not exceeding 40, feet above the hull, a white light, in a lantern so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least a mile; and at or near the stern of the vessel and at such a height that it shall not be less than fifteen feet lower than the forward light, another such light (n). Anchor lights.

(l) See *The Devonian*, (1901) P. 221.

(m) See *The Fire Queen* (1887), 12 P. D. 147.

(n) Vessel held to blame when

the lights at same height. *The Hermod* (1890), 6 Asp. M. C. 509.

As to anchor lights under an older rule, see *The Lady Downshire* (1878), 4 P. D. 26.

Provided that a vessel within Art. 7 of the general regulations (viz., steam vessels of less than 40, and vessels under oars or sails of less than 20, tons gross tonnage respectively, and rowing boats) when at anchor shall not be obliged to carry the lights prescribed by this rule, but if they do not carry them each of such vessels shall carry in a place where it can best be seen, and at a height above the gunwale of not less than nine feet, a white light in a lantern so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least a mile.

Daylight
signal for
vessels at
anchor.

7. A steam vessel when at anchor, except when lying at any stage, shall, between sunrise and sunset, carry in the forward part of the vessel, at a height of not less than 20, and not exceeding 40, feet above the hull, a black ball not less than two feet in diameter, and at or near the stern of the vessel, and at such a height that it shall not be less than 15 feet lower than the forward ball, another such ball: Provided that in the case of a steam vessel within Art. 7 of the general regulations, one such black ball only may be carried at a height above the gunwale of not less than 9 feet.

Lights for
vessels
carrying
explosives.

8. A vessel, having on board any explosive, except ships' ammunition, shall, when at anchor, carry a red light, in a globular lantern not less than 10 inches in diameter, six feet above the forward white light prescribed by Rule 6 hereof.

Provided that a vessel entitled to carry and carrying the white light prescribed by the proviso to Rule 6, shall carry the red light above described, not less than three feet above such white light.

Lights and
signals for
vessel
marking
wreck.

9. A vessel anchored to mark the position of a wreck or other obstruction, shall carry, in all weathers from sunset to sunrise, two bright white lights, in lanterns so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least a mile, which lights shall be placed horizontally on a cross yard on the foremast at a height not exceeding twenty feet above the hull and not exceeding twenty feet apart, and the said vessel shall carry, in all weathers between sunrise and sunset, two black balls placed as hereinbefore ordered with regard to the lights aforementioned.

Sound signals
for vessels at
anchor.

10. A vessel of 350 feet or upwards in length when at anchor shall, during fog, mist, falling snow or heavy rain storms, whether by day or night,

(1) ring in the forward part of the vessel the bell prescribed by Art. 15 (d) of the general regulations.

(2) sound at or near the stern of such vessel a loud-toned gong or a loud-toned triangle or other loud-toned article that cannot be mistaken for a bell, whistle, siren or foghorn.

The bell shall be rung, and the gong, triangle, or other article sounded, respectively, for a period of about five seconds at intervals of not more than one minute.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

Starboard
side rule.

11. Every steam vessel under way shall, when it is safe and

practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

12. The word "dredger" shall mean any vessel fitted with plant or apparatus for dredging or excavating or fitted with plant or apparatus for eroding or dispersing sand and other material. Dredger definition.

13. A dredger, when at work or in position for working, shall carry the following lights and signals, viz.: Lights and signals for dredgers at work.

LIGHTS BETWEEN SUNSET AND SUNRISE.

(i) (a) FORWARD.—In the forward part of the dredger, at a height of not less than 20, and not exceeding 40, feet above the hull, a white light, in a lantern so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least a mile.

(b) AMIDSHIPS.—Three such white lights placed in triangular form not less than 8 feet apart, the base of the triangle to be at least 10 feet higher than the forward light, and to be also higher than and clear of the framework, funnels, or any other erections upon the dredger.

(c) AFT.—One such white light, at or near the stern of the dredger, and at such a height that it shall be not less than 15 feet lower than the forward light.

(ii) A dredger when not making any way through the water shall not carry side or stern lights, but when making way shall carry the usual red and green side lights and the stern light prescribed by Rule 5 hereof.

SIGNALS BETWEEN SUNRISE AND SUNSET.

AMIDSHIPS.—Three red balls of not less than 2 feet in diameter placed in triangular form not less than 8 feet apart, the base of the triangle to be higher than and clear of the framework, funnels, or any other erections upon the dredger.

14. The lights and signals required to be carried by Rule 13 are to be taken by other vessels as signals that the vessel showing them is not under command, and cannot therefore get out of the way. Meaning of above signals.

15. A dredger, when not at work nor in position for working, shall carry the ordinary lights and signals required to be carried by vessels for avoiding collisions, as provided by these rules and by the rules and regulations now and from time to time in force under the "Merchant Shipping Act, 1894," and the "Mersey Channels Act, 1897." Lights for dredger not at work.

SUEZ CANAL (i).

The substance of the regulations for the navigation of the Suez Canal (of October, 1899) is as follows:—The maximum speed is to be five-and-a-third knots. All ships over 100 tons are to take pilots; "but the

(i) As to the owner's liability for negligence of canal pilot, see *The Guy Mannering* (1882); 7 P. D. 132.

responsibility as regards the management of the ship devolves solely on the captain" (j); yards are to be braced forward; jibbooms to be in; and a kedge ready to let go astern; a boat with hawser is to be towed astern; watch to be kept by day and night; hands are to be ready to let go, ease or cut hawsers; hawsers of ships moored to be eased to passing craft; speed to be slackened when passing works, dredgers, and other craft, and bow anchors ready to let go; whistles to be blown on approaching curves in the canal or other craft; "whenever a collision appears probable, no ship must hesitate to run aground and thus avoid collision. The expenses consequent upon a grounding under these circumstances shall be defrayed by the ship in fault"; an overtaking ship not to pass the other ahead whilst under way, or except as directed; sailing craft not to navigate at night; no steamship to navigate at night except she has approved searchlights; usual ships' lights to be carried; searchlights to be extinguished when moored in certain parts of the Great Bitter Lakes, and when coming to Port Said from the south; stern light to be red when accidentally stopped, and whistle to be sounded four or five times to approaching craft; ships moored to show white light at stern and two white lights on free side of channel; navigation at night to be at ships' risk; no ship to anchor in canal; whistle not to be sounded in port, except as danger signal; ship aground to wear pennant at mast-head by day and to show red light, or if fast aground, two red lights at night; ship moored, pennant at half-mast and by night the lights above stated; square flag at mast-head to mean "slacken your speed"; white light above two red lights to be shown by ships stopped by reason of damage or anchored in certain parts of Great Bitter Lakes; signals for dredgers and hoppers (k).

TEES, RIVER (l).

Tees, River.

Bye-laws dated the 2nd May, 1887, made under the Tees Conservancy Act and the Harbours, Docks, and Piers Clauses Act, 1847, provide:— (3) owner and master, and also pilot, if any, to be responsible for observance of bye-laws; (5) ships to be moored under direction of harbour-master, and anchors to be buoyed; (6) ships at anchor or moored to have sails furled, yards, davits, bowsprits, &c. to be peaked and rigged in; (7) anchors of ships moored to be inboard clear of gunwale or hanging from hawse pipe; (8) three ships only abreast at staiths, &c.; (9) ships at staiths, &c. not to lay anchor in channel; (10) ships not to lie between tiers; (13) steamships to carry the regulation lights, except that "in case of a steamship having no foremast it shall be sufficient if the said white light (*the masthead light*) be at a height not less than twelve feet above the hull, fixed on a staff not more than thirty feet from the stem; and in the case of a steam vessel not exceeding twelve feet in breadth, it shall be sufficient if such light be at a height not less than six feet above the hull, fixed on a staff not more than twelve feet from the stem"; (15) steamship in tow or under sail and not under steam to carry side lights only; (17) a "bright white light" to be shown from the stern of a ship being overtaken; (18) vessels at anchor and also outside vessel of tier to exhibit riding light; (19) open cargo and fishing craft and rafts to use the regulation lantern with

(j) 'As to the owner's liability for negligence of canal pilot, see *The Guy Mannering*, 7 P. D. 132.

(k) There is a practice in the Suez Canal for a southward going vessel, meeting a northward going vessel, to tie up until the latter has passed her. As to this, and

as to the navigation in general of the Canal, see *The Clan Cumming*, (1907) P. p. 311.

(l) The River Tees does not extend so far as the Fairway Buoy: *The Peter Benoit* (1914), 31 T. L. R. 227; 32 T. L. R. 124 (C.A.).

green and red slides; (20) ships to obey harbour-master. As to the navigation of the river, there are the following rules:—

21. Every vessel navigating the river shall keep the starboard side, so that the port-helm may always be applied to clear vessels proceeding in the opposite direction (*m*). Vessels to keep the starboard side.

22. Every steam vessel when approaching another vessel on an opposite course or from an opposite direction shall, before approaching within 100 yards, slacken her speed, and keep as near as possible to the starboard side of the river, so as to afford the greatest facility for passing the approaching vessel (*n*). Vessels meeting to slacken speed.

23. Every steam or other vessel (and whether being towed or towing another vessel) must so approach the river from sea as to enter on that side of the channel reserved for their navigation. River to be entered on proper side.

24. All vessels when under way, requiring to pass over a part of the channel which is not within that portion reserved for their navigation, for the purpose of proceeding to or from landings, moorings, or other places, must take upon themselves the responsibility of doing so in safety with reference to the passing traffic; and any vessel continuing its navigation after reaching such landing, mooring, or other place, must again proceed to the side of the river specified as the proper side for its navigation, so soon as practicable, and take upon itself the responsibility of doing so in safety, with respect to the passing traffic. Vessels making for landings.

25. Vessels crossing the river, and vessels turning, must take upon themselves the responsibility of doing so safely with reference to the passing traffic (*o*). Vessels crossing river and turning.

26. No steam vessel shall at any time be navigated in any part of the river at a higher rate of speed than a maximum rate of seven statute miles per hour over the ground (*p*). Speed prescribed.

27. Whenever there is a fog, no steam vessel shall be navigated in any part of the river at a higher rate of speed than three miles per hour. Speed in fog.

28. When steam vessels are proceeding in the same direction, but with unequal speed, the vessel which steams slowest shall, when overtaken, keep sufficiently to that bank of the river which is on her own starboard side, and shall offer no obstruction whatever, by crossing the channel or otherwise, to the free passage of the faster vessel, and shall ease and, if necessary, Vessels being overtaken.

(*m*) See *The Thetford* (1887), 6 Asp. M. C. 179, a decision upon a similar rule in the Tyne; *infra*, p. 547.

(*n*) These rules apply whenever two vessels navigating at all near the centre of the river are approaching one another, even though in such positions as to show one another their green lights. Unless there is extreme necessity, they must both of them port. *The Mary Lohden* (1887), 6 Asp. M. C.

262, decided under the corresponding Rules 17 and 18 of 1870.

(*o*) See last note.

(*p*) An earlier rule, which did not state whether the speed was over the ground or through the water, occasioned the decision in *The R. L. Alston* (1883), 8 P. D. 5. "Over the ground" should be altered to "through the water." *The Dettingen* (1914), 30 T. L. R. 589.

stop the engine as soon as a faster vessel comes within 100 yards, and in like manner the faster vessel shall ease its engine when it comes within 100 yards of the slower vessel, until it has passed the vessel so overtaken; and, that ignorance of the approach of the faster vessel may not be pleaded by the master of the slower vessel, it shall be sufficient intimation of such approach if the steam-whistle of the faster vessel be three times sounded; but no vessel overtaking any other vessel will be justified in passing such vessel at any of the points or turnings of the river, or at any dock entrance.

Steam vessels
and sailing
vessels.

29. Every steam vessel other than a steam vessel employed in towing, meeting, or overtaking any sailing vessel or steam tug with sailing vessels in tow, shall ease its engines before arriving within 100 yards of, and until it shall have passed, the sailing vessel or steam tug and trains. Every steam tug and train, when meeting another vessel, shall, in proper time, put their helms to port, and, when overtaken, shall keep sufficiently to the proper side of the river to allow the vessel overtaking them to pass.

Length of
tow-line.

30. All vessels towing in from sea with a long scope of tow-line must shorten the same on getting inside the river, and before reaching the Eston Wharf. The tow-line, when so shortened, must not exceed twenty-five fathoms in length.

Pilots on
towing
vessels.

31. Every steam tug or other steam vessel towing a vessel into the port which shall not already have a pilot on board, and whether showing a signal for a pilot or not, shall be bound to ease, or stop if necessary, to enable a pilot to board the vessel, unless the master thereof shall have previously informed the master of the steam vessel that he did not intend to take a pilot.

Vessels
mooring and
entering
dock.

32. No vessel shall be allowed to drift in any part of the river or harbour. Every vessel must be properly navigated, or moored clear of the navigable channel. Vessels proceeding to any dock, and arriving off the entrance of such dock before the signal for admission is hoisted, must keep on either side of the navigable channel, and out of the fairway of the river or dock traffic, until the signal is hoisted for their reception.

Size of tows.

33. No steam tug or other steam vessel shall tow two or more vessels alongside each other, nor shall tow more than one raft of timber when such rafts exceed 150 feet in length or thirty feet in breadth.

Number of
tows.

34. A steam vessel shall not tow at one time more than six keels, wherries, or other boats.

35. (*Vessels to be properly manned.*)

Obligation of
tugs.

36. Every steam vessel having any vessel or vessels in tow shall attend upon the vessel or vessels in tow until such vessel or vessels is or are properly moored or secured.

* * * * *

42. (*Vessels likely to be damaged by surge of passing craft may show red flag or red light; thereupon passing steam vessels to go dead slow whilst within 100 yards of the signal.*)

Speed re-
stricted in

43. No steam vessel shall go more than a speed of six statute miles per hour over the ground in that part of the river Tees

between the Commissioners' Graving Dock and Bamlett's Bight; nor at a greater speed than five statute miles per hour over the ground between Bamlett's Bight and Stockton Bridge. certain stretches.

44. (*Steamships' engines to be stopped when within fifty yards of small boats coming alongside.*)

45. (*Vessels approaching landing steps to ring bell or sound whistle.*)

THAMES.

The following bye-laws for the navigation of the River Thames are made under the Thames Conservancy Act, 1894, and the Port of London Act, 1908. By these many alterations from the bye-laws of 1898 have been made. The numbers in brackets in the margin are the numbers of the corresponding bye-laws of 1898, for which see the 5th or 6th editions of this work. Thames.

PORT OF LONDON RIVER BYE-LAWS, 1914.

1. (*Former bye-laws repealed.*)

2. (*Short title.*)

3. These bye-laws shall be applicable to so much of the River Thames (*q*) as is between an imaginary straight line drawn from high-water mark on the bank of the River Thames at the boundary line between the parishes of Teddington and Twickenham, in the County of Middlesex, to high-water mark on the Surrey bank of the river immediately opposite the first-mentioned point and an imaginary straight line drawn from the London Stone at the entrance to Yantlet Creek in the County of Kent to the City Stone opposite to Canvey Island in the County of Essex, including so much of the River Lee and Bow Creek respectively as are below the south boundary stones in the Lee Conservancy Act 1868 mentioned and all locks, cuts and works within the said portions of rivers and creeks; but not to any dock, lock, canal or cut existing at the passing of the Thames Conservancy Act 1894 and constructed under the authority of Parliament and belonging to any body corporate established under such authority, or to any bridge over the River Thames belonging to or vested in any county council or municipal authority or to or in any railway company: Application of bye-laws.

4. In these bye-laws every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether also under sail or not, is to be considered a steam vessel. Steam vessel under sail. (28. *Prelim.*)

5. In these bye-laws the words and expressions hereinafter mentioned shall have the meanings hereby assigned to them respectively unless there be something in the subject or context repugnant to such construction, viz.:— Interpretation clause. (4)

* * * * *

The expression "the Thames" or "the river" means and in-

(*q*) The 1898 bye-laws applied Rule 4, definition of "Thames." to the river up to Cricklade, see

cludes that part of the River Thames to which these bye-laws are made applicable by the provisions of Bye-law 3.

* * * * *

The word "vessel" includes any ship, lighter, keel, barge, launch, houseboat, pleasure or other boat, randan, wherry, skiff, dingey, shallop, punt, canoe, yacht, raft, float, float of timber, or craft whatever, whether navigated by steam or otherwise.

The word "lighter" means any dumb barge or other like craft for carrying goods, or any sailing barge with her masts and gear lowered on deck.

The expression "steam vessel" includes any vessel propelled by machinery.

The expression "steam launch" applies to a steam vessel not being used solely as a tug or for the carriage of goods and not being certified by the Board of Trade as a passenger steamer to carry two hundred or more passengers.

The expression "under steam" means under steam, electricity, or other mechanical power.

The expression "steam whistle" includes any efficient whistle or siren sounded by steam or some substitute for steam and approved by the Port Authority.

The expression "short blast" means a blast of about one second's duration.

The expression "prolonged blast" means a blast of from four to six seconds' duration.

The word "length" when used in relation to any vessel means the length appearing in her certificate of registry.

The word "master" when used in relation to any vessel means any person, whether the owner, master, or other person lawfully or wrongfully having or taking the command, charge or management of the vessel for the time being (r).

* * * * *

The expression "under way" when used in relation to a vessel means when she is not at anchor, or moored, or made fast to the shore, or aground, and includes a vessel dropping up or down the river with her anchor on the ground.

The word "visible" when applied to lights means visible on a dark night with a clear atmosphere.

The expression "by day" means between sunrise and sunset, and the expression "by night" between sunset and sunrise.

* * * * *

Exhibition of
signals.
(28. Prelim.)

6. The master of every vessel shall comply with the following bye-laws as to visible signals in all weathers as to lights by night and as to other visible signals by day, and during such

(r) *Quære*, whether "master" as here defined includes a pilot com- pulsorily in charge: *The Umsinga*, (1911) P. 234.

times no other lights or other visible signals which may be mistaken for the lights or other visible signals prescribed by these bye-laws shall be exhibited.

7. A steam vessel other than a steam launch when under way shall exhibit:—

- (a) *A masthead light as prescribed in Art. 2 (a), visible at a distance of at least two miles.* Provided that steam vessels which navigate both above and below London Bridge shall not be required to exhibit their lights at a greater height than twelve feet above the hull. Such steam vessels when navigating above London Bridge may exhibit the bright white light at any convenient height above and in line with the stem.
- (b) *A green light as prescribed in Art. 2 (b), visible at a distance of at least one mile.*
- (c) *A red light as prescribed in Art. 2 (c), visible at a distance of at least one mile.*

(d) *Provisions identical with Art. 2 (d).*

(e) *An optional additional white light for steam vessels as prescribed by Art. 2 (e) (s).*

- (f) A steam vessel when towing another vessel, or when attached to another vessel for the purpose of towing or manœuvring the same shall in addition to her side lights exhibit two bright white lights in a vertical line one above the other not less than four feet apart, and each of these lights shall be of the same construction and character and shall be exhibited in the same position as the bright white light which other steam vessels are required to exhibit.

Steam vessel
when towing
to have two
white lights.

Such steam vessel may exhibit a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

- (g) Steam vessels plying as ferries, when crossing directly from one side of the river towards the other side, shall by day exhibit three black balls or shapes not less than two feet in diameter which shall be placed vertically in the forward part of the vessel not less than three feet apart, and shall, by night, in addition to the side lights exhibit two lights in a vertical line one above the other not less than four or more than six feet apart, the upper light green and the lower one white, and each of these lights shall be of the same construction and character and shall be exhibited in the same position as the bright white light which other steam vessels are required to exhibit by sub-clause (a), and also shall in addition by night exhibit from the stern two lights in a vertical line one above the other not less than four or more than six feet apart, the upper light green and the lower one white, and each

(s) New rule.

of these lights shall be of the same construction and character and shall be exhibited in the same position as the fixed white light described in the second paragraph of Bye-law 13 (*u*).

Steam launch
lights.

8. Every steam launch when under way shall exhibit:—

- (a) On or before the foremast or if there be no foremast on the funnel or on a staff at the bow, in either case at a height above the hull of not less than four feet, a bright white light so fixed as to throw the light ten points on each side of the vessel, viz., from right ahead to two points abaft the beam on either side (*u*).
- (b) On the starboard side a green light so fixed as to throw the light from right ahead to two points abaft the beam (*u*).
- (c) On the port side a red light so fixed as to throw the light from right ahead to two points abaft the beam (*u*).
- (d) Each of such lights shall be of such a character as to be visible at a distance of at least one mile (*u*).

9. A white light when aground off draw-docks above Richmond Lock (*u*).

Sailing
vessel's lights.
(29)

10. A sailing vessel under way (*x*), and any vessel not under steam being towed, other than a lighter or a float or raft of timber, shall exhibit the same lights as are prescribed by Bye-law 7 for a steam vessel under way, with the exception of the bright white lights mentioned therein which they shall never exhibit.

Lights for
lighters, floats
and rafts.
(31)

11. A lighter, float or raft of timber when under way and not in tow shall by night have a white light in a lantern of a pattern approved by the Port Authority always ready and the person in charge thereof shall exhibit the same on the approach of any vessel.

This bye-law shall not apply to barges used for the conveyance of petroleum as defined in the bye-laws for the Regulation and Carrying of Petroleum on the Thames.

Lights on
lighters, &c.
in tow.

12. (a) The master of a steam vessel shall not, by night, commence to tow any lighter, float or raft of timber, unless a white light, similar in construction and character to that mentioned in Bye-law 11 is exhibited on the stern or after part of such lighter, float or raft of timber. Provided that if there be more than one such lighter, float or raft of timber being towed in line the white light above referred to shall be exhibited on the stern, or after part, of the sternmost or last of such line (*u*).

(b) The master of a steam vessel shall not by night commence to tow any lighter lashed alongside such steam vessel unless a white light of the construction and

(*u*) New rule.

(*x*) A sailing barge dredging down with mast lowered not within this rule. *The Indian Chief* (1888), 14 P. D. 24. As to the

duty of a ship being so navigated to warn an approaching vessel, see *The Juno* (1894), 7 Asp. M. C. 506.

character above mentioned is exhibited on the side of such lighter farthest from such steam vessel (y).

- (c) The person in charge of the lighter, float or raft of timber upon which in compliance with the foregoing provisions, a white light is exhibited shall by night after the towage has commenced and during the towage continue to exhibit such light. (32)

13. A vessel other than a lighter or a float or raft of timber which is being overtaken by another vessel shall exhibit from her stern to such last mentioned vessel a white light, or a flare up light. Lights for overtaken vessel. (33)

The white light required to be exhibited by this bye-law may be fixed and carried in a lantern and exhibited continuously, but in such case the lantern shall be so constructed, fitted and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, viz.:—for six points from right aft on each side of the vessel so as to be visible at a distance of at least one mile. Such light shall be exhibited as nearly as practicable on the same level as the side lights.

14. A vessel under one hundred and fifty feet in length when at anchor or moored (z) shall, by night, exhibit forward where it can best be seen but at a height not less than ten feet and not exceeding twenty feet above the hull a white light (hereinafter called the riding light) in a lantern so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least one mile. Lights for vessel at anchor or moored. (30)

Provided that in the case of a lighter the riding light may be placed on the highest available part thereof.

A vessel of one hundred and fifty feet or upwards in length when at anchor or moored shall, by night, exhibit in the forward part of the vessel at a height of not less than twenty and not exceeding forty feet above the hull one such light, and at or near the stern of the vessel and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

Provided that—

- (a) Where masted vessels are lying made fast at the moorings in the tiers, only the outermost off shore of such vessels in each tier shall be required to exhibit the riding light.
- (b) Where masted vessels are lying made fast, fore and aft, at wharves, piers, jetties or derricks, only the outermost off shore of such vessels as are in the fairway shall be required to exhibit the riding light or lights above prescribed (y).
- (c) Lighters lying at the usual barge moorings in the river above Gravesend, and lighters lying made fast at wharves, piers or jetties or alongside vessels thereat, shall not be required to exhibit the riding light.

(y) New rule.

(z) See *The St. Aubin*, (1907) P. 60; *The Wega*, (1895) P. 156.

- (d) Every steam vessel, sailing vessel or lighter moored permanently head and stern in the river shall, in addition to or in lieu of the riding light, exhibit such light or lights as the Port Authority shall from time to time order or direct.

Day signal
for vessel at
anchor in the
river below
Bow Creek.

15. A vessel of one hundred and fifty feet or upwards in length shall, by day, when at anchor in the river below Bow Creek, exhibit a black ball or shape of not less than two feet in diameter, such ball or shape to be fixed in the forward part of the vessel at a height of not less than twenty and not more than forty feet above the hull (a).

This bye-law shall not apply to vessels used as hulks and moored fore and aft.

Lights and
signals for
vessel
aground in
or near the
fairway.

16. A vessel of one hundred feet or upwards in length, other than a lighter, aground in or near the fairway shall, by night, exhibit (b) in the forward part of such vessel three lights placed vertically of which the centre one shall be red and the other two white (such lights to be visible all round the horizon at a distance of at least one mile) and by day shall exhibit two black balls or shapes not less than two feet in diameter which shall be placed vertically in the forward part of the vessel not less than six feet apart (a).

(30, at end.)

A vessel of one hundred and fifty feet or upwards in length shall by night in addition to the above-mentioned lights exhibit the after light required to be carried by a vessel at anchor.

The lights or balls or shapes mentioned in this bye-law shall be so placed that the lowermost in the forward part of the vessel shall be at a height of not less than twenty feet and not more than forty feet above the hull, and the after light not less than fifteen feet lower than the lowermost forward light (a).

This bye-law shall not apply to vessels above London Bridge or to vessels lying at tiers, wharves, piers or jetties.

Signals to
mark posi-
tions of
wrecks.
(34)

17. All vessels when employed to mark the positions of wrecks or other obstructions shall exhibit where the same may best be seen by day a green flag and by night two white lights placed horizontally not less than six or more than twelve feet apart.

Dredger's
lights.
(35)

18. Every steam dredger moored in the river shall, in addition to the lights prescribed by Bye-law 14, exhibit three white lights from globular lanterns not less than eight inches in diameter, the said three lights to be placed in a triangular form with the apex uppermost at right angles to the keel and to be of sufficient power to be visible at a distance of at least one mile, and to be placed not less than six feet apart on the highest part of the framework athwartships.

(a) New rule.

(b) And until they can be exhibited give the signal prescribed by Rule 25. This rule excludes

the operation of Art. 11, so held with regard to former rule. *The Bitinia*, (1912) P. 186.

This bye-law shall not apply to dredgers lying at tiers, wharves, piers or jetties.

19. (a) Every steam dredger or other vessel engaged in under-water work may exhibit where the same may best be seen, by day, two green flags and by night in addition to the lights prescribed by these bye-laws two green lights placed vertically not less than four and not more than six feet apart (*d*). Signals for vessels engaged in under-water work.
- (b) Every vessel when passing any craft exhibiting the signal prescribed by this and the previous bye-law, shall be kept well clear of such craft and shall be navigated with care and caution and at a speed and in such a manner as not to cause injury thereto or to endanger the lives of those engaged in under-water work (*d*). Approaching craft engaged in dredging or other under-water work.

20. The signals by whistle mentioned in the following bye-laws shall be made by steam whistle and shall not be used on any occasion or for any purpose except those therein mentioned or those from time to time authorised by the Port Authority and no other signal by whistle shall be made by any vessel (*e*). Signals by whistle. (43)

21. A steam vessel shall be provided with an efficient steam whistle so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn to be sounded by mechanical means, and also with an efficient bell. A sailing vessel of twenty tons gross tonnage or upwards shall be provided with a similar fog horn and bell. A dredger (*d*) shall be provided with an efficient gong. Vessels to be provided with efficient sound signalling instruments. (36)

22. All signals prescribed by these bye-laws for vessels under way shall be given:— Sound signals for vessels under way. (36)

(1) By steam vessels—on the steam whistle.

(2) By sailing vessels and vessels which are being towed and are not under steam, other than lighters—on the fog horn.

23. When a steam vessel under way is about to turn round she shall signify the same by four short blasts (*f*) of the steam whistle in rapid succession followed after a short interval if turning with her head to starboard by one short blast, and if with her head to port by two short blasts, and whilst turning shall repeat such signal to any approaching vessel which latter vessel shall take action to avoid collision. Vessel turning round. (40)

24. When a steam vessel under way is for any reason not Vessel not

(*d*) New rule.

(*e*) Under a former rule, which contained a similar prohibition, a vessel was held to blame for not giving a warning whistle when rounding a bend. *The Kennet*, (1912) P. 114.

(*f*) The former rule prescribed four blasts only. Under that rule held that the four-blast signal, not the three-blast, should be given when going astern for the purpose

of turning. *The New Pelton*, (1891) P. 258. And see *The Harberton*, (1913) P. 149; *The Wega*, (1895) P. 156. A steamship turning must give the three-blast signal under Rule 27, as well as the four-blast signal, if her engines working astern send the vessel bodily astern for any material distance, e.g., for a length and a half. *The Ancona*, (1915) P. 200.

under
command.
(40)

under command or is unable to manœuvre as required by these bye-laws, she shall signify the same to any approaching vessel by four short blasts on her steam whistle in rapid succession and thereupon such approaching vessel shall take action to avoid collision (*h*).

Vessel
aground.

25. When a steam vessel under way takes the ground she shall immediately signify the same by five or more short blasts on her steam whistle in rapid succession and shall repeat such signal at short intervals until she shall have exhibited the lights or signals prescribed by Bye-law 16 (*i*).

Vessel coming
out of dock
or leaving
wharf, &c.
(41)

26. A steam vessel coming out of dock or leaving a wharf or tier shall signify the same by a prolonged blast of the steam whistle, except in the case of a vessel coming out of the St. Katharine Docks requiring the bascules of the Tower Bridge to be raised in order to get into position in the river which shall signify the same by a prolonged blast of the steam whistle followed by three short blasts in rapid succession.

In the case of a vessel not under steam the tug in attendance shall make the foregoing signals.

Sound signals
for a steam
vessel in sight
of another
vessel.
(39) (42)

27. When vessels are in sight of one another, a steam vessel under way in taking any course authorised or required by these bye-laws shall indicate that course by the following signals on her steam whistle, viz.:—

One short blast to mean "I am directing my course to star-board."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "My engines are going astern" (*h*).

Sound signals
for vessels in
fog, &c.
(36)

28. In fog, mist, falling snow or heavy rain storms, whether by day or night the signals described in this bye-law shall be used as follows, viz.:—

(a) A steam vessel having way upon her shall sound at intervals of not more than two minutes a prolonged blast.

(b) A steam vessel under way but stopped and having no way upon her shall sound at intervals of not more than two minutes two prolonged blasts with an interval of about one second between them.

(c) A steam vessel dropping up or down the river with her

(*h*) In *The Longnewton* (1888), 6 Asp. M. C. 302, a sailing barge was found in fault for disregarding a steamer's signal given under a similar rule. The steamer's difficulties were created by causes beyond her control. It was not decided whether, if this had not been the case, the barge would necessarily have been in fault for taking no step; but Sir James Hannen expressed the opinion that in any case the prudent course for a sailing ship would be to act at once

upon hearing the signal.

(*i*) A new rule: see *The Broms-grove*, (1912) P. 186.

(*h*) A vessel turning and giving the appropriate four-blast signal is not required to give, in addition, three short blasts when, in the process of turning, her engines are going astern. *The Harberton*, (1913) P. 149. It is wrong to give the three-blast signal when going astern for the purpose of turning. *The New Pelton*, (1891) P. 258.

- anchor on the ground shall sound at intervals of not more than two minutes two prolonged blasts with an interval of about one second between them (*l*).
- (d) A vessel when towing shall sound at intervals of not more than two minutes three blasts in succession, viz.:—one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.
 - (e) A steam vessel under way about to turn and whilst turning round shall sound at intervals of not more than two minutes four short blasts in rapid succession followed, if turning with her head to starboard by one short blast, and if with her head to port, by two short blasts (*m*).
 - (f) A steam vessel under way which for any reason is not under command or which is unable to manœuvre as required by these bye-laws shall sound at intervals of not more than two minutes four short blasts in rapid succession.
 - (g) A sailing vessel under way shall sound at intervals of not more than one minute when on the starboard tack one blast; when on the port tack two blasts in succession; and when with the wind abaft the beam or becalmed three blasts in succession.
 - (h) A vessel when in the fairway (*n*) and not under way shall at intervals of not more than one minute ring the bell rapidly for about five seconds (*o*). (38)
 - (i) A dredger when in the fairway and not under way shall at intervals of not more than one minute sound a gong rapidly for about five seconds (*m*).

Sailing vessels of less than twenty tons gross tonnage and lighters shall not be obliged to give the above-mentioned signals but if they do not they shall make some other efficient sound signal at intervals of not more than one minute.

This bye-law shall not apply to keels, boats, randans, wherries, skiffs, dingeys, shallops, punts, canoes, floats or rafts of timber.

29. (*Identical with Art. 16.*)

30. (a) The master of every vessel intending to pass up the river through the Tower Bridge and requiring the bascules to be raised shall notwithstanding any previous bye-law or regulation and in addition to the

Speed in og.

(37)

Lights and signals for vessels requiring the

(*l*) New rule.

(*m*) New rule.

(*n*) A sailing barge, brought up above and inside the West Blyth buoy, was held to be in the fairway so as to be required to ring her bell. *The Blue Bell*, (1895) P. 242; cf. *The Clutha Boat* 147, (1909) P. 36. In America "fairway" has been defined to mean

"water upon which vessels of commerce habitually move"; not necessarily the deep-water channel marked by buoys. *The Oliver*, 22 Fed. Rep. 848.

(*o*) A ship that has accidentally taken the ground is not required to ring a bell: *The Carlotta*, (1899) P. 223, 229.

bascules of
Tower Bridge
to be raised.

ordinary lights to be exhibited by such vessel when under way, exhibit before arriving at Cherry Garden Pier, and shall continue to exhibit until such vessel shall have passed through the said bridge, the following signals (p) :—

- (i) By day, one black ball not less than two feet in diameter placed in such a position on such vessel where it can best be seen at a height above the hull of not less than twenty feet.
- (ii) By night, two red lights in globular lanterns of not less than eight inches each in diameter placed vertically six feet apart at a height of not less than twenty feet above the hull and in such a position where they can best be seen, and so constructed as to show a clear, uniform and unbroken light visible all round the horizon at a distance of at least one mile on a dark night with a clear atmosphere.
- (b) The master of every vessel intending to pass down the river through the said bridge and requiring the bascules to be raised shall notwithstanding any previous bye-law or regulation and in addition to the ordinary lights to be exhibited by such vessel, exhibit the signals prescribed by sub-clause (a) of this bye-law until the vessel has passed through the said bridge.
- (c) The master of every steam vessel intending to pass up the river through the said bridge and requiring the bascules to be raised shall in foggy weather in addition to the signals prescribed by sub-clause (a) of this bye-law give when passing Cherry Garden Pier a signal by one prolonged blast of the steam whistle of not less than five seconds' duration followed by three short blasts in rapid succession, and shall continue to give such signal at moderate intervals until the vessel is in sight of the said bridge.

This signal shall not be used in clear weather.

- (d) The master of every steam vessel intending to pass down the river through the said bridge and requiring the bascules to be raised shall both in foggy and clear weather in addition to the signals prescribed by sub-clause (a) of this bye-law give the sound signal mentioned in sub-clause (c) of this bye-law when such vessel is ready and in position to proceed through the said bridge.

Sailing
vessels.

31. (*Identical with Art. 17.*)

32. (*Identical with Art. 20.*)

(44)
Steam and
sailing vessels.

33. Every steam vessel proceeding up or down the river shall when it is safe and practicable keep to that side of mid-channel which lies on the starboard side of such vessel (p) and

(45)
Rule for river.

when two steam vessels proceeding in opposite directions the

(46)

(p) New rule.

one up and the other down the river are approaching each other so as to involve risk of collision they shall pass port side to port side (*q*) unless the special circumstances of the case make departure from this bye-law necessary. (*See Bye-law 41.*)

34. Every steam vessel crossing (*r*) from one side of the river towards the other side shall do so at a proper time having regard to vessels navigating up and down the river, and shall be navigated so as not to cause obstruction injury or damage to any other vessel (*s*). Steam vessel crossing river. (48)

35. Steam vessels plying as ferries when crossing directly from one side of the river towards the other side shall keep out of the way of vessels navigating up and down the river (*ss*). Steam ferries crossing river. (48)

36. Every steam vessel navigating against the tide shall on approaching (*t*) points or sharp bends in the river ease her speed and if necessary stop and wait (*u*) before rounding so as to allow any vessel navigating with the tide to round and pass clear of her. Steam vessel approaching points. (47)

37. (*Identical with Art. 24.*)

38. Where by these bye-laws one of two vessels is to keep out of the way the other shall when it is safe and practicable keep her course (*x*). Overtaking vessels. (52)
Keeping course. (52)

(*q*) In *The Odessa* (1882), 4 Asp. M. C. 493 (followed in *The Ber-rington* and *The Ostrich*, Ad. Div. 9th March, 1883; but cf. *The Joseph Rickett*, Ship. Gaz. March 5th, 1901), it was held that these words, in former rules, were not to be interpreted in the same way as the "end-on" rule (Art. 18) of the sea regulations. Two vessels approaching each other, one bound up and the other down the river, may be within the Thames rule, although not end-on, or nearly end-on, within the meaning of the sea regulations. The Thames rule applies if the ships are on courses which involve risk of collision, but not otherwise. See *The Guildhall*, (1908) P. 29; (1908) A. C. 159; *The Lady Wodehouse* (1886), 2 Times L. R. 252. The rule does not apply to a ship with no way on her, waiting under a point for other ships to pass clear. *The Altyre*, Ad. Div. 27th Feb. 1885, and on this point see also *The Libra* (1881), 6 P. D. 139.

(*r*) As to when a vessel is held to be crossing the river, see *The John Hollway*, (1900) P. 37; *The River Derwent* (1891), 7 Asp. M. C. 409; *The Schwan* (1889), 6 Asp. M. C. 409.

(*s*) New rule.

(*ss*) New rule. Under former

rules all vessels crossing had to keep out of the way. See *The Schwan* (1889), 6 Asp. M. C. 409; *The River Derwent* (1891), 7 Asp. M. C. 37; *The John Hollway*, (1900) P. 37.

(*t*) In *The Margaret* (1884), 9 P. D. 47; 9 A. C. 873, the meaning of the expression "rounding" a point used in former rules was much discussed. Butt, J., and the House of Lords held that it contemplated two vessels in different reaches sighting each other over the point, or at any rate before they both arrive off the point. See also *The Ovingdean Grange*, (1902) P. 208.

(*u*) This does not mean that she is to wait in the slack water or eddy under the point. "I think the meaning of that is, that she shall so far check her speed as to prevent her coming up to the point at the same time when the other vessel would come there." *Per Brett, L. J.*; *The Libra* (1881), 6 P. D. 139, 145; and see *The Margaret* (1884), 9 P. D. 47, 50; and see *per Lord Watson*, 9 A. C. 885.

(*x*) In *The Skerryvore*, Ad. Div. 19th Aug. 1886, Sir J. Hannen said that "keep her course" did not mean, in the case of a vessel rounding a point, that she was

Reduction
of speed.
(49)

39. (*Identical with Art. 23.*)

40. (*Identical with Art. 22*) (*y*).

Crossing
ahead.

Dangers of
navigation.
(28. *Prelim.*)

Look-out, &c.
(28. *Prelim.*)

41. The master of every vessel in obeying these bye-laws shall have due regard to all dangers of navigation and collision and to any special circumstances which may render a departure from them necessary in order to avoid immediate danger.

42. The master of every vessel shall keep or cause to be kept a proper look out and shall comply with all bye-laws as to lights and signals and shall observe all precautions which may be required by the ordinary practice of seamen or by the special circumstances of the case (*z*).

Navigation in
anchorage
ground,
Gravesend
Reach.
(8)

43. All vessels navigating (*a*) Gravesend Reach shall be kept to the northward of the anchorage ground hereinafter defined.

This bye-law shall not apply to vessels navigating the said Reach which are proceeding to the anchorage ground for the purpose of obtaining Customs clearance therein or to or from an anchorage or moorings therein or to vessels going alongside or leaving the hulks permanently moored therein.

All vessels anchoring in the said Reach shall bring up in such anchorage ground and all vessels so anchoring and remaining beyond a period of twenty-four hours shall be moored.

Limits of
anchorage
ground.

The anchorage ground is that portion of the said Reach which lies within the boundary lines hereinafter described.

The southern boundary line is that part of the south shore which lies between the northern and eastern boundary lines.

The northern boundary line is an imaginary line drawn from the Northfleet Lighthouse (S. 88° E. true) on with the northernmost of three high chimneys at the Cement Works at Northfleet extending eastward to the eastern boundary line.

The eastern boundary line is an imaginary line drawn from the Explosives Notice Board in Higham Bight (N. true) and extending northward until it meets the northern boundary line.

N.B.—At night the Northfleet Lighthouse shows a white occulting light to the northward of the northern boundary line and a red occulting light to the southward of such line over the anchorage ground.

44. *Channel not to be obstructed above Richmond lock* (*y*).

45. *As to removal of obstructions above Richmond lock* (*y*).

necessarily to keep at the same distance from either shore. If there were a "clear eye" elsewhere, she was at liberty to approach either shore to avail herself of it. See also, as to this rule, *The Schwan* (1889), 6 Asp. M. C. 409; and *The River Derwent* (1891), 7 Asp. M. C. 37. At the date of these decisions there was, however, no rule directing vessels to keep to the starboard side of mid-channel; see Rule 33. Note that in this rule the words "and speed" are omitted.

(*y*) New rule.

(*z*) A barge, though not under way, should have a man on board, if in a dangerous position, to warn approaching vessels. *The St. Aubin*, (1907) P. 60.

(*a*) A vessel moving from buoy to buoy within the anchorage ground for the purpose of bringing up at the first one that is vacant is not "navigating Gravesend Reach" within the meaning of a former rule in similar terms. *The City of Delhi* (1887), 6 Asp. M. C. 269.

46. No float or floats or raft or rafts of timber either singly or together exceeding sixty feet in length (excepting timber in one length) and twenty feet in width shall save when in the act of entering or leaving any dock or canal be under way or navigated in the river unless such float or floats or raft or rafts be towed by a steam vessel efficient for the purpose in which case the same shall not exceed one hundred and fifty feet in length (excepting timber in one length) and thirty feet in width, nor in either case shall any following float or raft of timber go within a distance of three hundred yards of any other such float or raft. As to floats or rafts of timber. (7)
47. *Notice to be given of position of vessel sunk in river (c).*
48. *Notice to be given of position of anchor left in the river.* (9)
49. No anchor of a vessel at the tiers shall be allowed to lie or remain in the river outside of the line of the tiers. Anchors in the river. (10)
50. Every vessel when navigating or lying in the river shall carry her anchor in such a position as not to cause injury or damage to any other vessel (*d*). How anchor to be carried. (11)
51. No steam vessel shall be worked, navigated or placed on or anchored or moored in the river within three hundred and sixty feet of His Majesty's dockyard or arsenal at Woolwich or of His Majesty's victualling-yard at Deptford except steam vessels belonging to or employed in the service of His Majesty his heirs or successors. Navigation near Woolwich Arsenal or Victualling-yard. (12)
52. No steam vessel attached to any mooring buoy, mooring post, dolphin, jetty or landing place shall work her engines so that injury or damage may be caused to such mooring buoy, mooring post, dolphin, jetty or landing place or any vessel or thing whatsoever. Working engines at mooring. (13)
53. The master of every steam vessel navigating the river shall be on one of the paddle boxes or on the bridge of such steam vessel during the whole of the time it is under way (*e*), and shall remove or cause to be removed any person other than the crew and pilot who shall be on the paddle boxes or bridge of such steam vessel. Master to be on bridge. (14)
54. *Precautions in taking in or discharging ballast.* (15)
55. No lighter or sailing barge shall lie in or be navigated on the river below Battersea Bridge without having a freeboard of at least fifteen inches, such freeboard to be measured amidships, and coamings (if any) may be included in such measurement, but in no case must the top of the deck or gunwale be less than three inches above the water's edge when Freeboard of barge. (16)

(*c*) New rule.

(*d*) Former rules prescribed how anchors should be carried: for decisions on effect of these rules, see *The J. R. Hinde*, (1892) P. 231; *The Six Sisters*, (1900) P. 302; *The Rose of England* (1887), 6

Asp. M. C. 304; The Margaret (1881), 6 P. D. 76; *The Dunstanborough*, (1892) P. 863; *The Monte Rosa*, (1893) P. 23.

(*e*) As to temporary absence, see *The Umsinga*, (1911) P. 234.

such craft is decked and hatched or less than six inches above the water's edge when such craft is open.

Provided that this bye-law shall not apply to a lighter or sailing barge when being loaded or discharged.

No vessel to be moored to piers, &c. without permission.

(20)

56. No vessel shall be moored to or remain at any pier or premises belonging to the Port Authority without the permission of the officer in charge of such pier or premises being first obtained, and every vessel so moored or remaining by permission shall move away when ordered by such officer so to do.

Vessels to be navigated singly except when towed.

(22)

57. All vessels under way in the river shall be navigated singly and separately except small boats fastened together or towed alongside or astern of other vessels, and except vessels towed by steam vessels.

Not more than six vessels to be towed at one time below Chelsea Bridge.

(23)

58. Vessels towed by steam vessels navigating the river below Chelsea Bridge shall if more than two in number be placed two abreast (except vessels not exceeding fourteen feet nine inches in width which may be placed three abreast), and not more than six (f) of any such vessels shall be towed together at the same time, and no tow of vessels shall exceed in length the following limits, namely:—

Above London Bridge	400 feet
Between London Bridge and the landing place at the end of Trinity Street, Charlton	320 feet
Below the said landing place	400 feet

to be calculated from the stern of the vessel towing to the stern of the aftermost vessel towed.

A steam vessel may tow another vessel lashed alongside of her, but shall not at any one time tow more than one vessel in such a manner.

The provisions of this bye-law as to the number and disposition of the vessels shall not apply when such vessels are being moved at the entrance of a dock within the radius of such dock or are being moved between adjoining tiers or barge roads on the same side of the river or between a derrick and barge roads where the distance between such derrick and barge roads does not exceed one hundred yards.

Not more than six vessels to be towed at one time above Chelsea Bridge.

(24)

59. Vessels towed by steam vessels navigating the river above Chelsea Bridge may be placed in a single line but shall not be placed more than two abreast (except vessels not exceeding fourteen feet nine inches in width which may be placed three abreast), and not more than six of any such vessels shall be towed together at the same time and the distance between any two of the vessels so towed shall not exceed fifty feet.

Vessels approaching Kew toll collecting station.

60. The master of every steam vessel which is being used as a tug shall when approaching the toll collecting station at Kew so navigate his vessel as to avoid overcrowding at the said station, and shall if necessary ease the speed of his vessel at a

(f) See *Gadney v. Rough* (1879), 40 L. T. 258.

sufficient distance from the said station to allow for the collection of tolls from any other vessel, and shall if necessary stop and await his turn for payment of tolls, such turn to be determined according to the order of arrival of vessels (g).

61. A lighter when under way (h) on the river shall have at least one competent man constantly on board for the navigation and management thereof and a lighter exceeding fifty tons but of not more than one hundred and fifty tons burden shall when under way have one man in addition (i) constantly on board and a lighter exceeding one hundred and fifty tons burden shall when under way have two men in addition constantly on board to assist in the navigation and management of the same.

Number of
hands on
lighters.
(27)

Provided that where a lighter is in tow of a steam vessel or is being moved between any vessels or places a distance not exceeding two hundred yards one competent man on such lighter shall be sufficient.

The word "burden" in this bye-law shall have the same meaning as the expression "burden tonnage" defined by the Thames Watermen's and Lightermen's Act, 1893.

62. No vessel without the consent of the Port Authority shall be placed or be permitted to remain in such a position as to obstruct or interfere with the access to any dock entrance (j).

Vessel not to
obstruct dock
entrance.

63. *Vessel not to be moored or placed in front of towing path.*

64. When any vessel is stopped between the towing path and the navigable channel, the mast, or towing mast or the funnel (if any) shall be lowered so as to permit the towing lines of any other vessel to pass without obstruction, and when any vessel shall be moored at any wharf or elsewhere in the river the same shall be securely made fast at both ends thereof and shall be laid as close to and along the side or front of such wharf or mooring place as conveniently may be.

As to towing
lines and
mooring of
vessels.

65. *Mode of towing from the bank.* 66. *Master of vessel to obey directions of officers of Port Authority.* 67. *Houseboat and steam launch not to lie in any part of the river marked off by Port Authority.* 68. *Intoxication, abusive language, &c.* 69. *As to payment of tonnage dues on vessel not entered at the Customs.*

70. The owner or occupier of any pier, jetty or other structure in the river, or on the shore thereof shall light or mark such pier, jetty or other structure in such manner as the Port Authority may from time to time direct.

Pier, jetty,
&c., to be
lighted or
marked.
(19)

71. *As to advertisement on vessel or river.* 72. *Trespassing on towing path.* 73. *Removing material, &c.* 74. *Vessel not*

(g) New rule.

(h) As to having a man on board when not under way, see *The St. Aubin*, (1907) P. 60.

(i) Must be a competent man;

M.

an apprentice is a competent man. *Gosling v. Newton*, *Gosling v. Eagers*, (1895) 1 Q. B. 793.

(j) New rule.

to stop in Richmond Lock. 75. Sail not to be used in Richmond Lock. 76. Vessel to be made fast in Richmond Lock. 77. Injury to bank. 78. Trespassing on land adjoining towing paths and injuring works. 79. Persons not to meddle with sluices. 80. Vessel on river at boat race, regatta, &c., not to obstruct. 81. As to offence against decency, bathing, &c. 82. Penalty for breach of bye-laws.

Regulations as to Watermen, Lighters, Tugs, &c.

Thames;
watermen.

By sect. 80 of 22 & 23 Vict. c. 133 (Local), amended by 27 & 28 Vict. c. 113, the master, wardens, and assistants of the Company of Watermen and Lightermen of the River Thames are empowered, subject to the approval of the Thames Conservators, to make bye-laws "for carrying into effect the purposes of the Act," including, *inter alia*, the making of "proper regulations for the navigation of barges, lighters, boats, and other like craft . . . for the security of passengers . . . and for the orderly conduct of traffic." Bye-laws have been made under the above Acts, some of which have to be construed with reference to the Thames Rules. The following are cases upon the Watermen's Act bye-laws:—*Perkins v. Gingell* (1886), 50 J. P. 277; *Rolls v. Newell* (1890), 25 Q. B. D. 335; *Elmore v. Hunter* (1877), 3 C. P. D. 116; *Goldsmith v. Slattery* (1890), 63 L. T. 273; *Duckham v. Gibbs*, (1900) 1 Q. B. 394.

TYNE.

Tyne.

The River Tyne bye-laws of 15th November, 1884, are made under the River Tyne Improvement Act, and the Act incorporated therewith. (See the Tyne Improvement Acts of 1850, 1852, 1857, 1859, 1861, 1865, and 1877; the Harbours, Docks, and Piers Clauses Act, 1847.) They provide for (5) the mooring of vessels under the harbour-master's orders; anchors not to be let go; (6) dismantling; (7) anchors to be on deck or hung from hawse-pipe; (9) one vessel only to lie at a staith; (10) vessels not to lie between tiers; (11) steamers moored not to move engines. The rule as to steamships' lights (12) is the same as Art. 3 of the Sea Regulations, except as to steamships without foremast, which may carry the masthead light on a staff, as in the Tees Rules (*supra*, p. 528); (13) steamships towing to carry a second light on the foremast or staff; (14) steamships and sailing ships being towed and steamships under sail to carry side lights only; (15) stern light to be shown to overtaking ship; (16) vessels at anchor, outside vessel of tier, and any other vessel so ordered by harbour-master, to show riding light; (17) rafts and open boats to show either red and green side lights, or lantern with red and green slide, and the last of a line of boats being towed to exhibit a white light from the stern.

Fog signals.

18. Every steam vessel shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn, and with an efficient bell. Every sailing vessel shall be provided with a similar fog-horn and bell.

In fog, mist, or falling snow, whether by day or night, the following signals shall be used:—

- (a) Upon a steam vessel under way a prolonged blast shall be made with the steam whistle or other steam sound signal, at intervals of not more than two minutes.

- (b) Upon a sailing vessel under way a like blast shall be made with the fog-horn at intervals of not more than two minutes.
- (c) Upon a steam vessel and a sailing vessel, if and when anchored, the bell shall be rung at intervals of not more than two minutes (*k*).

As to Navigation.

19. Every vessel under way shall, when proceeding seaward, be kept to the south of mid-channel, and when proceeding inward from sea or up the river, to the north of mid-channel, and so that in either case such vessel shall, with a port helm, always be and be kept clear of any vessel proceeding in the opposite direction. Side of river to be taken.

20. Every steam or other vessel (whether towing any other vessel or not, or being towed) shall, unless prevented by stress of weather, be brought into port to the north of mid-channel, and be taken out of port to the south of mid-channel (*l*), (*m*). Side to be taken on entering or leaving port.

21. Every vessel when under way, and requiring to pass over a part of the channel which is not within that half reserved for its navigation, for the purpose of proceeding to or from any landing, mooring, or other place, shall be navigated so as to cause no obstruction, injury, or damage to any other vessel; and every vessel continuing its navigation, after reaching such landing or mooring, or other place, shall be navigated as soon as practicable to the side of the river specified as the proper side for its navigation, and so as to cause no obstruction, injury, or damage to any other vessel. Vessels on wrong side of navigable channel.

22. Every vessel crossing the river, and every vessel turning, shall be navigated so as not to cause obstruction, injury, or damage to any other vessel (*m*). Vessels crossing river or turning.

23. When steam vessels proceeding in opposite directions are approaching each other they shall be kept on their proper Steamers proceeding in opposite directions.

(*k*) A tug moored to a pontoon at the Fish Quay was held not to be at fault for not ringing her bell in a fog as she was not at anchor within this rule. *The Titan; The Rambler* (1906), 10 Asp. M. C. 350.

(*l*) This means that a vessel coming in from sea must not cross "so near as not to leave room for vessel's going out of the river, and, if she is coming from the southward, before she turns in, she must leave a fairway for all vessels going out of the port." *The John of Scott*, (1897) P. 68; *The Harvest* (1886), 11 P. D. 14.

(*m*) These rules do not make a crossing vessel liable, whatever the circumstances may be, if she comes in contact with another vessel which is on the side of the river

prescribed for her navigation. A vessel may legitimately cross the river whenever it is reasonably safe to do so, and it is the duty of other vessels proceeding up or down the river to use the ordinary precautions for avoiding collision with her. *The Thetford* (1887), 6 Asp. M. C. 179; and see *The Henry Morton* (1874), 2 Asp. M. C. 477, *supra*, p. 472. See also *The Skipsa*, (1905) P. 32, *per* Goroll Barnes, J., at p. 37. "It is a kind of give and take; but I do not think I am going too far in saying that the weight of the operation at the outset is principally upon the vessel crossing in this sense, that she must see whether she has room to cross, and, if she has room, she may cross."

sides, and, if necessary, speed shall be slackened, the vessel going against the tide in all cases giving way to the one going with the tide; and when steam vessels are approaching each other so as to involve risk of collision, their helms shall be put to port, and, if necessary, their engines shall be stopped or reversed.

Steamer
meeting
sailing vessel.

24. When any steam vessel (except a steam vessel when towing sailing vessels) is approaching any sailing vessel or steam tug with sailing vessels in tow proceeding in the opposite direction, the speed of such steam vessel shall, if necessary, be slackened when it is within thirty yards of and until it shall have passed the sailing vessel or steam tug and towed vessels.

Speed not to
exceed six
knots.

25. Sea-going steam vessels shall not be navigated in the port above the Low Lighthouse at a greater speed over the ground than six knots or seven statute miles per hour, whether going with or against the tide.

26. (*Vessels not to cause risk of collision.*)

27. (*Steamship unable to keep out of the way of sailing ship to sound four blasts of two seconds' duration; then sailing ship to keep out of way.*)

Vessels
overtaking
others.

28. Every sailing or steam vessel overtaking any other vessel shall be kept out of the way of the overtaken vessel, which shall be kept on her course, and no obstruction shall be wilfully caused by the overtaken vessel to the passage of the overtaking vessel; and any vessel having passed another shall not cross the bows of the passed vessel until at such a distance as will not necessitate the stopping or easing of the passed vessel to avoid collision.

29. (*Regulations as to pilots.*)

30. (*Scope of tow-line, except to eastward of Low Lighthouse, North Shields, not to exceed twenty fathoms.*)

31. (*Not more than one vessel exceeding 200 tons to be towed by same tug.*)

32. (*Length of train of vessels in tow not to exceed 450 feet from stern of tug; vessels not to be towed abreast; rafts not to exceed 250 feet by 40 feet.*)

33. (*Not more than six keels, wherries, or boats to be towed at once.*)

34. (*Two tugs towing same vessel not to be more than 100 feet apart, or, if towing abreast, more than forty feet.*)

35. (*Vessels not to drift; off dock entrances vessels waiting admission to keep out of fairway.*)

37. (*Vessels to have anchor ready to let go.*)

38. (*Vessels to be carefully navigated.*)

Vessels
in fog.

39. Every vessel under way when overtaken by a fog shall be navigated at a very moderate speed, and shall, as soon as practicable, be moored or anchored out of the navigable channel. Vessels shall not, without the permission of the harbour master, be got under way during a fog.

40. (*Engines to go dead slow 100 yards before reaching, and fifty yards after passing, diving and other craft of the Commissioners.*)

41. (*And within 100 yards of wreck-removing craft.*)
42. (*A red flag or red light to be shown on dredgers on side where chains are taut. Vessels to pass on other side.*)
43. (*Also where no passage between dredger and shore.*)
44. (*Vessels not to moor at Commissioners' white buoys.*)
46. (*Vessels to be properly manned.*)
47. (*Tug to attend vessel in tow till moored.*)
48. (*Engines not to move within fifty yards of boat coming alongside.*)
73. (*Scope of tow-line for hopper-barge above Low Light not to exceed 16 fathoms.*)
78. A competent person in charge shall at all times, both by day and by night, be on board every boat or other vessel lying at or alongside any stairs, causeway or landing place, and on board every sea-going vessel, whether serviceable, unserviceable, stranded, disused, or laid-up. Vessels to be in charge of competent persons.
86. (*Notice of vessels sunk or stranded to be given*), and there shall, during night time, be exhibited at or over such vessel two bright white lights, placed horizontally, not less than 6 or more than 12 feet apart, each light being of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least one mile; and during daytime a green flag, or a wreck buoy painted green, of a size sufficient to be visible at least 500 yards. Vessels sunk or stranded.
109. (*Speed of steamers in dock not more than 2 miles per hour.*)
120. (*Every vessel entering, leaving, or in dock to be in charge of persons employed by the owner and Commissioners. not responsible for navigation or care of vessel or for insufficiency of any rope, &c., which they may lend or allow to be used or for voluntary assistance rendered by their officers to such vessel.*) Responsibility of Commissioners.
142. (*Vessels not to be berthed without permission.*)

APPENDIX III.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW IN REGARD TO COLLISIONS.

TRANSLATION OF THE CONVENTION.

Signed at Brussels, September 23rd, 1910 (a).

Art. 1. Where a collision occurs between sea-going vessels or between sea-going vessels and vessels of inland navigation, the compensation due for damages caused to the vessels, or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place.

Art. 2. If the collision is accidental, if it is caused by *force majeure*, or if the cause of the collision is left in doubt, the damages are borne by those who have suffered them.

This provision is applicable notwithstanding the fact that the vessels, or any one of them, may be at anchor (or otherwise made fast) at the time of the casualty.

Art. 3. If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault.

Art. 4. If two or more vessels are in fault the liability of each vessel is in proportion to the degree of the faults respectively committed. Provided that if, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equal, the liability is apportioned equally.

The damages caused, either to the vessels or to their cargoes or to the effects or other property of the crews, passengers, or other persons on board, are borne by the vessels in fault in the above proportions, and even to third parties a vessel is not liable for more than such proportion of such damages.

In respect of damages caused by death or personal injuries, the vessels in fault are jointly as well as severally liable to

third parties, without prejudice, however, to the right of the vessel which has paid a larger part than that which, in accordance with the provisions of the first paragraph of this article, she ought ultimately to bear, to obtain a contribution from the other vessel or vessels in fault.

It is left to the law of each country to determine, as regards such right to obtain contribution, the meaning and effect of any contract or provision of law which limits the liability of the owners of a vessel towards persons on board.

Art. 5. The liability imposed by the preceding articles attaches in cases where the collision is caused by the fault of a pilot, even when the pilot is carried by compulsion of law.

Art. 6. The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfilment of any other special formality.

All legal presumptions of fault in regard to liability for collision are abolished.

Art. 7. Actions for the recovery of damages are barred after an interval of two years from the date of the casualty.

The period within which an action must be instituted for enforcing the right to obtain contribution permitted by paragraph 3 of Art. 4, is one year from the date of payment.

The grounds upon which the said periods of limitation may be suspended or interrupted are determined by the law of the Court where the case is tried.

The high contracting parties reserve to themselves the right to provide, by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the defendant vessel in the territorial waters of the State in which the plaintiff has his domicile or principal place of business.

Art. 8. After a collision, the master of each of the vessels in collision is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to the other vessel, her crew and her passengers.

He is likewise bound so far as possible to make known to the other vessel the name of his vessel and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

A breach of the above provisions does not of itself impose any liability on the owner of a vessel.

Art. 9. The high contracting parties whose legislation does not forbid infringements of the preceding article bind themselves to take or to propose to their respective Legislatures the measures necessary for the prevention of such infringements.

The high contracting parties will communicate to one another as soon as possible the laws or regulations which have already been or may be hereafter promulgated in their States for giving effect to the above undertaking.

APPENDIX III.

Art. 10. Without prejudice to any conventions which may hereafter be made, the provisions of this convention do not affect in any way the law in force in each country with regard to the limitation of shipowners' liability, nor do they affect the legal obligations arising from contracts of carriage or from any other contracts.

Art. 11. This convention does not apply to ships of war or to Government ships appropriated exclusively to a public service.

Art. 12. The provision of this convention shall be applied as regards all persons interested when all the vessels concerned in any action belong to States of the high contracting parties, and in any other cases for which the national laws provide.

Provided always that—

1. As regards persons interested who belong to a non-contracting State, the application of the above provisions may be made by each of the contracting States, conditional upon reciprocity.
2. Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the convention are applicable.

Art. 13. This convention extends to the making good of damages which a vessel has caused to another vessel, or to goods or persons on board either vessel, either by the execution or non-execution of a manœuvre or by the non-observance of the regulations, even if no collision had actually taken place.

Art. 14. Any one of the high contracting parties shall have the right, three years after this convention comes into force, to call for a fresh conference with a view to possible amendments, and particularly with a view to extending, if possible, the sphere of its application.

Any Power exercising this right must notify its intention to the other Powers, through the Belgian Government, which will make arrangements for convening the conference within six months.

Art. 15. States which have not signed this convention are allowed to adhere to it on request. Such adhesion shall be notified through the diplomatic channel to the Belgian Government, and by the latter to each of the other Governments; it shall become effective one month after the sending of the notification by the Belgian Government.

Art. 16. This convention shall be ratified.

After an interval of at most one year from the day when the convention is signed, the Belgian Government shall place itself in communication with the Governments of the high contracting parties which have declared themselves prepared to ratify the convention, with a view to deciding whether it should be put into force.

The ratifications shall, if so decided, be deposited forthwith

at Brussels, and the convention shall come into force a month afterwards.

The protocol shall remain open another year in favour of the States represented at the Brussels Conference. After this interval they can only adhere to it on conforming with the provisions of article 15.

Art. 17. In the case of one or other of the high contracting parties denouncing this convention, such denunciation shall not take effect until a year after the day on which it has been notified to the Belgian Government, and the convention shall remain in force as between the other contracting parties.

ADDITIONAL ARTICLE.

Notwithstanding anything in the provisions of article 16, it is agreed that it shall not be obligatory to give effect to the provisions of article 5, establishing liability in cases where a collision is caused by the fault of a pilot carried by compulsion of law, until the high contracting parties shall have arrived at an agreement on the subject of the limitation of liability of ship-owners.

INDEX.

ABANDONMENT,

- after collision, 122.
- by crew, 122.
- by owner of ship sunk, 124.
- liability of owners after, 103.

ACTION,

- at common law, 221.
- cargo action usually postponed to ship action, 275.
- consecutive collisions, for, 184.
- in personam*, cannot be tacked to action *in rem*, 279.
 - against pilot in Admiralty, 277.
 - bar to action *in rem*, 235, 275.
- in rem*, 1, 91.
 - under Lord Campbell's Acts, formerly did not lie, 232.
 - under Maritime Conventions Act, 233, 280.
 - against public authority, 277.
 - for damage to cargo, against carrying ship, 91.
 - where judgment *in personam* unsatisfied, 277.
 - where damage but no collision, 91.
- limitation of liability for. See *Limitation, Action for*.
- limitation of time for bringing, under Maritime Conventions Act, 1911...89, 96, 183.
- owners resident abroad, against, 222.
- pilot, against, 76, 277.
- separate actions for damage to property or person, 277.
- stay of, when action pending elsewhere, 233.
- successive actions, by sufferers in collision, 113.

ADMIRALTY JURISDICTION,

- American law, 93 *note*.
- cargo, damage to, 245 *seq*.
- County Courts, of, 288.
- damage but no collision, 38.
- damage lien, where none, 91.
- foreign ships, over, 220.
- High Court, of, 223.
- limits of, 220, 286.
- loss of life, for, 232, 233, 280.
- property ashore, damage to, 83, 287.
- tug and tow, negligent towage, 210.
- wrong-doer, personal action against, 76, 82.

ADRIFT, damage by craft sent, 17, 79, 97.

AGONY OF COLLISION,
ship seeking to excuse herself must not be responsible for sudden peril, 13.
wrong step taken in, not negligence, 12, 13, 67.

ALTERATION OF COURSE,
"alter her course to starboard" (or port) explained, 378.
causing risk, 39, 307.
for greater safety, 309.
in fog, 308, 361.
indicated by alteration of apparent horizontal distance between vessel's lights, 308.
when danger imminent, 68.

AMERICA, LAW OF,
as to Admiralty jurisdiction, 210 *note*, 232 *note*.
application of the regulations, 302.
cargo owner's remedy where both ships to blame, 153 *note*.
compulsory pilotage, 241.
division of loss, 153, 217.
infringement of the regulations, 75.
tug and tow, 211, 217.
liability under, in case of compulsory pilotage, 241.
of ship, 101.

ANCHOR,
anchor a cock-bill, damage by, 27.
anchor watch, 454.
coming to an anchor, duty of ship, 461.
damages for slipped, 39.
unbuoyed, 105.
failure to let go, 22, 480.
foul berth, 460.
insufficient ground tackle, or moorings, 461, 463.
letting go to avoid collision, 13, 22, 24.
single anchor, riding to, with other craft to leeward, 461, 463.
slipping to avoid collision, 464, 467.
stowing, in dock, 479.
vessel dredging with her, 320, 365, 380, 473.

ANCHOR, SHIP AT,
Art. 4 does not apply to, 325.
burden of proof on collision with, 42, 44.
cable parting, 44.
dragging, when both vessels, 37.
duty to keep clear of, 43, 459.
duty of, to make snug, 44.
fishing boats fast to their nets, 347.
fishing grounds, on, 472.

ANCHOR, SHIP AT—*continued.*

- fog, in, 21.
 - fog signal for, Art. 15...348.
- foul berth, giving a, to, 460 *seq.*
- getting under way in bad weather, 468.
- giving chain to avoid collision, 469.
- in an improper place, 43, 459, 464, 466.
- in the track of ferry boat, 366.
- insufficient moorings, or ground tackle, 16, 21, 108, 461, 463.
- making fast to another ship, 465, 469.
- meaning of term, 319, 342.
- moor, neglecting to, where prudent, 463.
- parting of cable or moorings, 461, 465.
- precautions to be observed by, 454, 462 *seq.*
- refusal of, to move from dangerous place, 43.
- riding lights of, Art. 11...341 *seq.*
 - must be exhibited promptly, 344.
 - for fishermen, Art. 9...333 *seq.*
- sheering about, 344.
- sheering or giving chain to avoid collision, 44, 463.
- shifting berth, 43.
- single anchor, with, 461, 463, 464.
- slipping to avoid collision, 467.
- vessel dragging through mud, not, 344.

APPEAL. See *Practice; Costs.*

APPROACHING OTHER CRAFT,
 close shaving, 9, 306, 475.
 duty, when, 413, 475.
 indication of risk, 307.
 speed, when, 413.

AQUILIAN LAW, shipowners' liability by, 77.

ARREST. See *Proceedings in rem.*
 appearance of owners, to compel, 173.
 avoided by giving bail, 88, 94.
 cargo, of, to compel payment of freight, 90.
 cause, without reasonable, 280.
 connection with limitation of liability, 173.
 foreign ship, of, 222.
 foreign sovereign, ship of, 230.
 mail ships of, 232.
 re-arrest for costs, 279.
 security for costs, ship arrested is, 89.
 undertaking to give bail, after, 280.
 wrong ship, of, 279, 291.

ASHORE,
 collision with ship ashore, 16, 42, 103.
 duty to light ship ashore, Art. 11...342.
 persons ashore, negligence of, causing collision, 187.

ASHORE—continued.

- ship putting herself ashore to avoid collision, 39.
- ashore doing damage as she comes off, 16, 476.
- sunk or ashore, liability for damage by, 103—105.
- taking the ground alongside a ship, 461.
- tug working at ship ashore, 474.

ASSESSORS,

- advise Court upon questions of seamanship, 273.
- functions of, 273, 274.
- judgment of the Court, take no part in, 274.

AUSTRALIA, COMMONWEALTH OF, Maritime Conventions Act, 1911, adopted by, 75, 230.

AVERAGE CONTRIBUTION,

- collision does not give rise to, 260, 264.
- division of loss, formerly a form of, 138, 160.
- recoverable as damages, 131.

BAIL,

- arrest, usually given to avoid, 88, 94.
- co-owners liable in bond given by one, 286.
- cost of, in salvage action, recoverable, 127.
- costs of bail, 95, 298.
- damage lien, whether discharged by, 95.
- excessive, demand for, 95, 279.
- foreign sovereign suing in British Court, 232.
- insufficient, 95.
- judgment for amount in excess of, 95, 278.
- sufficient, ship free if, 95.
- undertaking to give, arrest after, 280.
- failure to give after, 279.

BAILEES of ship or cargo, may recover for collision, 113.

BANKRUPTCY,

- of owner of wrong-doing ship, 89, 94, 96.
- of plaintiff, cost of repairs recoverable, 118.

BARGE,

- driving with the tide, 23, 480.
- in tow, duty of tug to avoid collision, 480.
- leaving unattended, whether negligence, 458.
- whether a "ship" or "vessel," 178.

BARRATRY,

- collision by negligence is not, within Bill of Lading, 249.
- infringement of the regulations is not, 269.

BEATING OUT TACKS, duty of ship as to, 397, 470.

BELGIUM, LAW OF, compulsory pilotage, as to, 228, 241.

BELL,

ship at anchor in fog to use, Art. 15...348.
 Turkish ships do not use, 348.

BILL OF LADING. See *Carrier*.

BOAT. See *Fishing Vessels*.

hand lights for, Art. 7...330.
 regulations, application of, to, 331.

BOND TO STOP ARREST,

liability of master on, 285.
 recovery on, by surety against co-owners, 285.

BOTTOMRY BONDHOLDER on freight, his right when liability limited, 166.

BREACH OF REGULATIONS. See *Regulations for Preventing Collisions at Sea; Infringement of Regulations*.

BURDEN OF PROOF,

defective equipment causing damage, 205.
 facts peculiarly within knowledge of party, of, 50.
 loss after collision, that was not caused by the collision, 120.
 necessity of departing from regulations, 65.
 negligence, of, 2, 40, 446.
 plaintiff, on, to make at least a *primâ facie* case, 40.
 even when defendants admit blame, 41.
 shifting of, when *primâ facie* case made, 41.
 ship at anchor, 42, 44.
 ship required to keep course and the other, as between, 47.
 when regulations infringed, 49, 446.
 failure to stop and reverse, 412.
 ship neglects to keep her course, 47.
 whether on plaintiff to prove that an established infringement of the regulations contributed to the collision or on the infringer to prove that it did not, 57, 71.

CABLE,

insufficiency of, 461, 463.
 jamming of, on windlass, 21.
 parting of, 16, 22, 44.

CAMPBELL'S ACT, LORD,

actions under, division of loss, rule as to, did not apply, 154.
 in rem, formerly could not be brought, 233, 280.
 now can be, 133, 155, 280.
 foreigners and foreign ships, application to, 232.
 jury, assessment of damages by, 285.
 liability when more than one vessel in fault is joint and several, 154.
 limit of time for bringing, 133.

CANADA, LAW OF,

Great Lakes of, local rules for, 503.

infringement of regulations, repeal of presumption of fault, 75.

Maritime Conventions Act, 1911, adopted, 75, 230.

CARE. See *Negligence*.

CARGO. See CARGO OWNER.

arrest of, to compel payment of freight, 90, 110.

liability to, not affected by Act limiting liability, 183.

• damage lien does not attach to, 90.

damage to, by carrying ship, claim for, governed by contract of carriage, 245 *seq.*

no damage lien, 91, 270.

by collision, right to damages, when, 246 *seq.*

between ships of same owner, 248.

transshipment after collision, 248.

CARGO OWNER. See *Cargo*; *Carrier*.

action by, for damage to cargo, 91, 113.

usually stayed until claim by ship decided, 275.

Admiralty jurisdiction in case of damage to cargo, 90, 251.

average contribution from, none in case of collision, 260.

damage to cargo, right of action *in rem* but no lien for, 90.

liability of, none for collision, 110.

early law as to, 90 *n.*of shipowner to, as carrier, 245 *seq.*

of master to, 250.

rights of, against carrier, 245 *seq.*

effect of exception of collision, 247.

when carrier a railway company, 249.

against ships not affected by agreement between shipowners that both to blame, 152.

in case of collision, when both ships to blame, 111, 248.

between two ships of same owner, 111, 152, 248.

to costs when both ships to blame, 307.

rule as to division of loss, how affected by, 152.

CARRIER,

Admiralty jurisdiction in case of damage to cargo, 90, 251.

average contribution in case of cargo lost or damaged by collision, 260.

damages recoverable against, 134.

division of loss, rule as to, how it applies to, 134, 249.

exceptions in bill of lading, what cover collision, 247.

perils of the sea, meaning of, 247.

CARRIER—*continued*.

- exceptions in bill of lading, collision by negligence not
barratry, 249.
effect of deviation, 249.
- common carrier, when shipowner is a, 245.
when is liable as a, 245.
- shipowner's liability as, 134, 245 *seq.*
at common law, 246.
effect of division of loss rule on, 134.
when carrying in ship of another
owner, on contract of carriage, 134,
245.
when a railway company, 249.
entitled to limit both in contract and
in tort, 184.
- tug-owner's liability for goods in tow, 246.

CERTIFICATES, OFFICERS',
may be cancelled for collision, 262.

CHARTERED SHIP,
liability for damage by, 80 *seq.*

CHARTERER,
liability of, for collision, 80, 84.
limitation of liability, right to, 179.
shipowner's liability to, for collision, 250.

CHARTER-PARTY, loss of, recoverable as damages, 119, 130.

CIVIL LAW, shipowner's liability under, 77.

CLOSE-HAULED, SHIP,
duty of, on port and starboard tacks, Art. 117...367, 370.
luffing by ship on starboard tack, 370, 372.
usually preferable to bearing away, 447.
meaning of term, 372.
whether ship hove-to is, 372.

CLOSE SHAVING,
is negligence, 9, 306.
effect of suction, 41.
standing too close to other craft, 475.

CLYDE,
local rules of navigation in, 513.
the regulations in force in, 301.

COLLISION,
actions for, are *communi juris*, 220.
abroad, 221.
average contribution, does not give rise to, 260, 264.
between two ships, caused by negligence of a third, 17.
ships of the same owner, 111, 152, 248.
cause of action, what is, 1, 2, 25 *seq.*, 49.
causing loss of life. See *Loss of Life*.

COLLISION—*continued*.

- caused by a previous collision, 16, 184.
- civil law as to liability, 77.
- common law jurisdiction when collision on high seas, 221.
- criminal liability for, 260 *seq*.
- damages, what may be recovered. See *Damages*.
- fact of, no evidence of negligence, 1, 40.
- fault, both ships in. See *Division of Loss*.
 - without, in either ship. See *Inevitable Accident*.
- foreign law, application of, to. See *Foreign Law*.
 - ships, between. See *Foreign Ships*.
- four classes of, 36.
 - Lord Stowell's dictum, 136.
- in body of a county, 91, 220, 286.
 - dock, 221.
 - fog. See *Fog*.
 - foreign inland waters, 221.
- incidental rights and liabilities arising out of, 260 *seq*.
- liability for. See *Liability*.
 - by maritime law, 102.
- limitation of shipowner's liability for. See *Limitation of Liability*.
- maritime lien for damage. See *Lien; Damage*.
- negligence causing. See *Negligence*.
 - of injured ship after, 122, 124.
- risk of, what is. See *Risk of Collision*.
- salvage services after, or to prevent collision. See *Salvage*.
- where more than two ships involved, 17, 184,
 - two ships liable for damage to a third, 18.
- wilful, 40, 79, 233.
- with barge driving with tide, 23, 480.
 - dredger, wear, house, bridge, breakwater, or wharf, 92.
 - King's ship, 76, 77, 109, 439.
 - lightship, 133, 182, 265.
 - pier in foreign country, 225.*
 - salvor, 24, 79, 263.
 - ship adrift, 17, 44.
 - ashore, 16, 103 *seq*.
 - at anchor. See *Anchor, Ship at*.
 - being launched, 4, 481.
 - disabled by her own fault, 16.
 - in stays, 23.
 - of foreign sovereign, 109, 230, 280.
 - lying dead, 42.
 - reference to contract of carriage. See *Carrier; Cargo Owner*.
 - insurance. See *Insurance*.
 - tug or tow. See *Tug and Tow*.

COMMAND,

- not under command, duty to keep out of the way of vessel, 326.

COMMAND—*continued*.

- not under command, lights and signals for vessel, Art. 4...
324 *seq.*
- when vessel is, within meaning of
Art. 4...325 *seq.*
- on tug or tow. See *Tug and Tow*.

COMMON EMPLOYMENT,

- fellow servants, compulsory pilot not of crew, 115.
whether master of crew, 115 *note*.
- no application of doctrine, as between tug and servants of
owner of tow, 195.
- owner's liability to crew limited by doctrine of, 115.

COMMON LAW,

- action at, after proceedings in Admiralty, 275, 278.
- collision at sea, jurisdiction at, 219 *seq.*
abroad, 221.
- early actions at, for, 3.
- compulsory pilot, shipowner not liable for acts of, at, 236.
- liability of shipowner at, 76. See *Liability*.
- limitation of liability, none by, 173.

COMPANY, LIMITED LIABILITY,

- in liquidation, damage by ship of, 94.
- "single-ship" company, damage by ship of, 190.

COMPULSORY PILOT,

- compulsory pilotage not abolished, 239.
- foreign country, in, liability of owners, 226, 241.
- former exemption of shipowner for negligent acts of, 83,
236.
- liability of shipowner for acts of, 236, 237.
principle upon which former exemp-
tion rested, 236.

CONSOLIDATION OF ACTIONS,

- action *in personam* with action *in rem*, 276.
- conduct in cross-actions consolidated, 275.
- different plaintiffs against same defendant, by, 112, 275.

CONSTRUCTION,

- of Act limiting liability, 175.
- of the regulations,
generally, 303.
- "at anchor," Art. 11...342.
- "aground," Art. 11...344.
- "authorised or required," Art. 28...450.
- "course," Art. 28...449.
- "course and speed," Art. 21...391.
- "fairway or mid-channel," Art. 25...423.
- "fishing with drift nets," Art. 9...338.
- "if necessary," Art. 23...401.
- "in sight," Art. 28...449.

CONSTRUCTION—*continued*.

of the regulations—*continued*.

“making way through the water,” 326.

“not under command,” Art. 4...325.

“proceeding,” Art. 20...386.

“under way,” 319.

“when engaged in trawling,” 338.

CONTRACTOR, INDEPENDENT, liability of ship for fault of, 104.

CONTRIBUTION. See *Average*.

amongst part-owners, for damages for collision, 110.

between wrong-doers, 110, 111, 281.

damages for loss of life, contribution to, 281.

CONVOYS, special rules as to lights for, Art. 13...346.

CO-OWNERS. See *Part-owners*; *Contribution*.

COSTS,

action for amount below County Court limit, of, 295.
for limitation of liability, of, 294.

admission of fault, after, 290.

Appeal, Court of, in, 293.

from County Court, of, 296.

from registrar, of, 293.

where both ships in fault, of, 294.

where judgment below is varied, of, 294.

arrest of wrong ship, 291.

both ships in fault, 289, 291.

compulsory pilot, 290.

counter-claim, of, rule as to, 289.

country solicitor, attendance of, 296.

co-defendants, of, 291.

defending salvage action arising out of collision, 128.

detaining seaman witnesses, of, 296.

excessive bail, of, 296.

general rule, 289, 291.

* H.M. ship, collision with, 292.

inevitable accident, no fault in either ship, 290.

judgment for, subsequent alteration of, 292.

liability for, beyond amount of statutory liability, 187.

mistake of examiner, occasioned by, 296.

paying freight into Court, of, 296.

re-arrest of ship for, 279.

reference to registrar, of, 292.

security for costs, 294.

sherthand notes, of, 296.

stand by, failure to, costs withheld by reason of, 291.

sureties on bail bond, of, 296.

tow, owner of, suing tug and third ship, 291.

violence of crew, costs withheld by reason of, 291.

witnesses, 296.

COUNTY COURT,

- Admiralty jurisdiction of, 221, 288.
- costs of appeal from, 296. And see *Costs*.
- gross actions, one in County Court, transfer, 277.

COURSE AND SPEED. See *Keep her Course and Speed*.**CREW,**

- action by, for effects lost in collision, 115.
- collision between two ships of same owners, remedy of, 111, 115.
- common employment, doctrine of, 115.
- costs of detaining, as witnesses, 296.
- shipowner's servants, are *primâ facie*, 76, 78.
- sufficiency of, 458.
- torts of, master not liable for, 76.
- tug, of, whether agents of owner of tow a question of fact, 193, 196.

CRIMINAL LIABILITY. See *Misdemeanour*.

- collision, for, 260 *seq*.
- fact that negligent act of servant is criminal does not relieve owner of liability, 80.
- infringement of regulations for, 80, 261, 317.
- master, of, 261.

CROSSING SHIPS,

- crossing the bows of the other ship, Art. 22...399.
- line of traffic, crossing the, 478.
- "overtaking" ship also crossing, 379.
- rounding a buoy or headland, 384, 424.
- sailing ships crossing, Art. 17...367.
- steamships crossing, Art. 19...382.
- vessels crossing fleet of warships, 439.
- what are, 379, 383.
- where both about to pick up pilot, 384, 444.
- one ship leaving dock, 385.
- winding river, application of rule, in a, 384, 424.

CUSTOM,

- conflicting with regulations is bad, 10.
- customary track in river, 427, 487.

DAMAGE LIEN. See *Lien, Damage; Proceedings in rem*.**DAMAGE TO CARGO.** See *Cargo; Cargo Owner*.**DAMAGE, WILFUL,** shipowner not liable for, 40, 79, 99, 233.**DAMAGES.** See *Carrier*.

- generally, 39, 117.
- abandonment of injured ship after collision, 122.
- Admiralty and common law rules, no difference between, 118.
- except as to interest, 120.

DAMAGES—*continued.*

- anchor slipped to avoid collision, 39, 131.
- average charges, 131, 260, 264.
- beaching after collision, 124.
- charter, loss of, 119, 130.
- consequential damages, 126.
- contribution for, joint wrong-doers, 110, 111, 281.
- costs of bail in salvage action, 127.
 - compulsorily raising sunken ship, 125.
 - defending action by third ship, 128.
 - salvage action caused by collision, 128.
 - detaining officers and crew, 128.
 - dry docking, 118.
 - repair, 118, 125.
 - recoverable, though plaintiff bankrupt and repairer unpaid, 118.
 - rescuing crew of wrong-doing ship, 128.
 - salvage incurred by reason of collision, 125, 127, 262.
- damages paid to third ship, 118.
- delay in raising, 125.
- demurrage, 128—130. See *Demurrage*.
- excess beyond value of *res* or bail, 77 *note*, 278.
- freight, when recoverable in lieu of interest, 119.
- increased by weak state of injured vessel, 126.
- insurers may recover in name of shipowner who has been paid, 114, 257.
 - payment by, no defence to claim for damages, 133, 259.
- interest on, 119.
 - added to amount of statutory liability, 187.
 - Admiralty practice in common law and transferred actions, 120.
 - freight, 127.
 - where loss of freight recovered, 119.
- life salvage claim, damages recovered not subject to, 133.
- lightship, penalty for damaging, 133.
- loss after collision presumably caused by collision, 120, 121.
 - consequent on previous damage, 122.
 - increased by negligence after collision, 122 *seq.*
 - of anchor slipped to avoid collision, 131.
 - of charter-party, 130.
 - of expected profit on cargo, 127.
 - salvage, 126.
 - of fishing gear, 131.
 - of fishing voyage, 131.
 - of freight, 127.
 - of life, 133.
 - of market, 132.
 - of profits, 131.
 - of use of ship, no money loss, 129, 130.
 - payment of, by insurers, no defence to claim for, 133.

DAMAGES—continued.

- market value recovered if ship lost, 119.
 - diminished when ship sunk and salvaged, 128.
 - how estimated, 119.
- measure of, 117.
 - no difference at common law and in Admiralty, 118.
- negligence after collision increasing loss, 122—126.
- new materials for old, no deduction for, 118.
- obligation to raise ship sunk by collision, none, 124.
- profits of voyage, 119, 120.
- remoteness, 39, 131.
- restitutio in integrum*, 117.
- where both to blame, 118, 134. And see *Division of Loss*.
- Workmen's Compensation Act payments, 115, 281.

DEMISED SHIP,

- liability for collision, 78, 82.
- what is charter by demise, 180.

DEMURRAGE,

- actual loss except in case of non-traders, 129.
- amount of, allowed, 128, 129, 130.
- attributed to first collision, where more than one, 129.
- none allowed where damages estimated on basis of total loss, 130.
 - where damages for loss of voyage recovered, 130.
- recoverable as damages, 128.
 - by non-trading body, 129.

DISABLED SHIP,

- by her own fault, liability of, 16.
- signals and lights for, Art. 24...324.

DISTRESS SIGNALS, Art. 31...488.**DIVISION OF LOSS,**

- Admiralty rule of, superseded by statutory enactment, 136.
- American law as to, 153.
- cargo owner, how affected by rule and statute, 145, 152—154.
 - not bound by shipowners' admission of both to blame, 152.
- Colonies, rule applied in some, 141.
- application of Maritime Conventions Act to, 75.
- collisions between vessels, rule applied to all, 142, 145.
 - statute applies to all cases of, between "vessels," 144.
 - three or more vessels implicated, 154.
 - the two to blame need not have been in collision, 145, 146.
 - where one craft is not a "vessel used in navigation," 287.
- compulsory pilot, application of rule when on vessel in charge of, 151.

DIVISION OF LOSS—*continued*.

contribution, 155, 156.

conventions, when can be referred to on construction of Act, 145 *note* (t).

equal division was the rule in all cases, 142.

now only where different degrees of fault cannot be established, 143, 147.

foreign ships, application to, 229.

history of the Admiralty rule, 137 *seq*.

division of damages under the early codes, 137, 156 *seq*.

division of damages in early English cases, 138, 158 *seq*.

Lord Stowell's dictum, 136, 166.

extended to collision cases tried in all Courts, 136, 141.

temporary repeal of rule in 1854 in certain cases, 141.

joint tortfeasors, 154.

judgment, form of, 149.

King's ship, whether Act applies to, 144.

liability to make good in proportion to fault, 147.

statutory limitation of, how it affects the, 141, 148 *seq*.

whether Act creates a, on each ship in fault, 150.

loss of life, action *in rem* for, 155, 156.

in County Courts, 156.

Maritime Conventions Act, 1911, s. 1...143.

applies in waters where collision regulations do not, 144.

cases in which it applies, 144 *seq.*, 287.

gives remedy unknown at law, 152.

King's ships, whether it applies to, 144.

probably does not alter law as to what constitutes fault, 145.

personal injury, action *in rem* for, 155.

policy of the rule, 139.

"running down" clause in policies, whether Act affects liability under, 150.

tug and tow, application of rule to, 146, 200, 208, 217.

"vessels," definition of, 144, 178.

DOCK,

collision in, County Court jurisdiction, 221.

coming out of, collision with ship, 385, 479.

general rule, in-going ship to give way, 480.

crossing rule does not apply between ships entering or leaving, 385.

moving propeller in, and causing damage, 474.

refusal to move in, 474.

DOCKMASTER,

compulsorily in charge, shipowners not liable for damage done by, 242.

liability of dock-owners for negligence of, 244.

- DOCK-OWNERS.** See *Harbour Authority*.
 action against, *in personam*, six months' limitation, 108.
 in rem, none, 277.
 duty of, to light and buoy sunken ship, 98.
 to provide safe berth, 107, 108.
 to remove wreck, 105.
 liability for insufficient moorings, 108.
 negligence of their servants, 105, 107, 244.
 damage by ship under orders of dockmaster,
 244.
 limitation of liability, 180, 183.
- DOCKYARD PORTS,**
 infringement of rules for, formerly caused presumption
 of fault, 69.
 ports for which rules have been made, 486 *note*.
- DREDGING,**
 anchor, vessel dredging with, course of, 380.
 fog, in, 365, 473.
 lights for, 320, 474.
 oyster dredgers, lights for, Art. 9...335.
- DRIFTER,**
 "fishing with drift nets," when, Art. 9...333, 338.
 lights for, 334.
- EDDY TIDE** causing collision, 404, 474.
- ELECTRICITY,** ships propelled by, are "steamships" for the
 purposes of the regulations, 312.
- EMPLOYMENT, COMMON.** See *Common Employment*.
- "END ON, OR NEARLY END ON,"**
 duty of steamships meeting, Art. 18...337, 380.
 meaning of term, 381.
 rule does not apply in Thames, 382.
 to sailing ships, 380.
 to ship rounding' a point, 232.
- EQUIPMENT.** See *Steering Gear ; Lights*.
 collision caused by deficient, is caused by "improper
 navigation," 186.
 defective, ship allowed to be at sea with, negligence, 15.
 shipowner not required to insure safety, 45.
 latent defect in, 16, 20, 45, 205.
 proper, duty to provide, 15, 203, 205.
- EVIDENCE.** See *Burden of Proof*.
 depositions, 271.
 foreign judgment, effect of, 233 *seq*.
 fact of collision, no evidence of negligence, 1, 40.
 interrogatories, answers to, 272.

EVIDENCE—*continued.*

- in previous action, 272.
 - before other tribunals, 271.
- judgment in another action, 270.
- letter of master, 272.
- logs, official, ships', and engineers', 271.
 - coastguard and lighthouse, 271.
- perjury not imputed, if other conclusion reasonably possible, 51.
- protest, 271.
- regulations, proof of, 272, 298.
- result of inquiry under Merchant Shipping Acts, 271.
- seamanship, of, 273.
- statements by seamen and others, 272.
- rules of, in Admiralty, 271.

FAIRWAY,

- meaning of term, 344, 423.
- vessel brought up in, collision with, 43, 459, 466.
 - duty to shift berth, 464.
- aground in, lights for, 342.

FAULT, STATUTORY PRESUMPTION OF. See *Presumption of Fault.*

FERRY BOAT,

- American cases as to collisions with, 366, 465, 467.
- bringing up in track of, 467.
- dense fog, obligation as to plying in, 365.

FISHERMEN'S LIGHTS. See *Fishing Boats; Lights, Ships'*

FISHING GROUNDS, extra care required in passing over, 472.

FISHING VESSELS,

- at work, when must keep out of the way under regulations, 338.
 - other vessels must keep out of the way of, 337.
 - duty of sailing ship approaching, Art. 26...431.
- drift-net fishermen, 334, 337, 338.
- fishing grounds, care when passing through, 472.
- fog-signals for, 336, 339.
- lights for, 333.
- line fishermen, 334.
- trawlers, 335, 337, 338.

FLARE,

- for fishermen, 335, 339.
- must not resemble a distress signal, 345.
- to attract attention, Art. 12...314, 345.
- to overtaking ship, to be shown to, Art. 10...339.

Fog,

- alteration of course in, 308.
- barge under way in, 480.
- dredging with anchor in, 365.
- duty of sailing ship in, 47, 363.
 - of steamship in, 359 *seq.*
 - to stop, 360.
 - to reverse, Art. 23...400.
- ferry boats in dense, 365.
- "navigating with caution," what is, 361.
- position of other vessel, ascertaining, 359.
 - duty when ascertained, 354, 360.
- running into, duty, 354, 359.
- speed in, Art. 16...353, 355.
 - dependent on visibility in, 355, 358.
 - ship's power of stopping, 355.
- excessive, is negligence, 354.
 - instances of, 357, 359, 363.
 - no inevitable accident, when, 19, 365.
 - unavailing excuses for, 359.
- sailing ship, of, 363.
- steam pressure, duty as to, 362.
- steamship lying dead in water in, 350.
- steering and sailing rules, application of, in fog, 364, 368.
- transmission of sound in, 48 *note*.
- under way unnecessarily in, 362, 365, 475.
- what is, within regulations, 351.

Fog-SIGNALS,

- Art. 15...348.
- failure to sound, effect on liability of, before and after 1911...70.
- for sailing ship on port or starboard tack, 348, 353.
 - with wind aft, 348.
- small craft, 349.
- steamship stopped, 348, 350, 351.
 - under way, 350.
- vessel at anchor, 348, 352.
 - fast to wharf or shore, 350.
 - fishing, Art. 9 (i)...336.
 - in tow, 349, 352.
 - towing, 349, 351.
- failure to hear, 48, 353.
- in neighbourhood of fog-bank or snow squalls, 351.
- mechanical fog-horn must be used, 352.
 - breaking down of, 352.
- Thames rules, as to, 538.
- transmission of sound in fog, 48 *note (d)*.

FOREIGN JUDGMENT. See *Judgment*.

FOREIGN LAW,

- collision abroad, in case of, 219, 220, 224.
- compulsory pilotage, liability of owners, 226, 228, 241.
- French law of negligence, 224.
- local rules of navigation, 227.
- when applicable, 219, 220, 224 *seq.*

FOREIGN SHIPS,

- Admiralty jurisdiction in case of collision between, 220.
- arrest or detention of, for injury to property of British subject, 93, 222.
- British local rules of navigation bind, 227.
- criminal liability for reckless navigation of, 262.
- division of loss, rule applies to, 229.
- duty of, to assist other ship in collision, 74.
- foreign owners, their liability, 219, 223 *seq.*
- sovereigns, ships of. See *Sovereign, Foreign*.
- limitation of liability, right of, 228.
- Lord Campbell's Act, application of, to, 232.
- negligence, liability for, 223.
- pilotage compulsory for, 227.
- priority of claims against, judged by *lex fori*, 226.
- public ships not liable to arrest, 230.
- regulations, application of, to, 219, 297, 298, 302.
- right to sue in British Courts, 220, 221.
- rule of the road for, 226.
- standing by, formerly liable for not, 74.
- tonnage of, for calculating liability, 189.
- wilful damage by, to another in foreign waters, 233.

FOUL BERTH, 460 *seq.*

FRANCE, LAW OF,

- compulsory pilotage, as to, 241.
- insurer's liability in case of collision, 252 *note*.
- negligence, liability for, 224.

FREE. See *Running Free*.

FREIGHT,

- arrest, liability of cargo to, for payment of, 90.
- damage lien attaches to, 90.
- loss of, recoverable as damages, 119.

GERMANY, LAW OF, compulsory pilots, as to, 242.

GETTING UNDER WAY, 468.

GOING ABOUT,

- beating out tack, rule as to, 389, 397, 419, 470.
- duty to keep clear of ship in stays, 42, 469.
- hold in stays, whether duty to, 471.

GOING ABOUT—*continued*.

- missing stays, duty on, 469.
- precautions before, 469.
- sailing ship must not embarrass steamship by, 390.
- ship should stay, not wear without reason, 469.
- ships on same tack beating to windward, 419, 469.

GOVERNMENT, SHIP BELONGING TO. See *Sovereign, Foreign*.

- arrest, not subject to, 109, 280, 346 *note*.
- foreign public ship, damage by, 230 *seq.*
- liability in case of damage by, 76, 77, 109.
- registration of, 346.

HAILING, misleading, effect of, 14.**HARBOUR.** See *Pier*.**HARBOUR AUTHORITY.** See *Dock-owner*.

- action against, limit of time, 108, 277.
- demurrage, may recover, though not working for gain, 129.
- duty of, to keep berth in proper condition, 106.
 - to light and buoy sunken ships, 98.
 - to remove wrecks, 106.
- liability of, for expense of removing sunken wrecks, 106.
 - for fault of harbour master, 105, 107, 242, 244.
 - for insufficient moorings, 108.
 - for negligence, 106 *seq.*, 244.
 - for omission to remove wreck, 106.
 - for pilot employed by, 242.
 - for tug employed by, 207.
- limitation of liability, 180, 183.

HELM,

- action of, with propeller reversing, 414, 415.
- assistance to, by starting sheets and braces, 364, 453.
- orders to, by hand, variety of practice, 379 *note*.
 - verbal, English usage not universal, 378 *note*.
- port helm rule. See *Port Helm*.
- signals, Art. 28...449.
 - meaning of course "authorised or required," 450.

HOVE-TO, SHIP,

- close-hauled, is, 372.
- duty to get way on, where risk of collision, 372, 394.
- fog, in, 365.
- how to "keep her course," 394.
- negligence to lie-to in the track of ships, whether, 373.
- "proceeding," probably is, 386.
- steamship hove-to, duty to keep out of the way of sailing vessel, 386.
- steering rules, ship hove-to must comply with, 372.
- under command within Art. 4...325.
- under way, within meaning of regulations, 460.

HUMBER, local rules of navigation for, 515.

ICE, where ship hindered by, inevitable accident, 24.

IN REM. See *Proceedings in rem*; *Lien*, *Damage*; *Action*.

INDEPENDENT CONTRACTOR,

doctrine does not apply to action *in rem*, 97, 98..

liability of ship for fault of, 104.

not raising sunken ship, liability for negligence of, 104.

INEVITABLE ACCIDENT,

act of God, *casus fortuitus*, 18 *note*.

American cases as to, 23 *seq*.

anchor, not letting go in time, 9.

burden of proving, 19.

cable jamming, 21.

or moorings parting, 21, 22.

combination of circumstances, 22.

costs in case of. See *Costs*.

craft driving with tide, 23.

defence of, none where failure to take proper precautions,
22.

regulations infringed, 20.

speed excessive, 19.

definition of phrase, 18, 19.

dense fog, 21, 23. See *Fog*.

disabled ship, 20, 21.

division of loss, whether rule formerly applied to, 165, 168.

fault of one ship causing collision between others, 18, 20.

instances of, 21 *seq*.

ship disabled, 20, 21.

driving over sand, 22.

steering-gear failing through latent default, 22, 45.

violent storm, 22.

INFRINGEMENT OF THE REGULATIONS. See *Regulations for Preventing Collisions at Sea*.

applicable to case, infringed regulation must be, to impose liability, 61.

burden of proof, whether on plaintiff to prove infringement contributed to the collision, or on the infringer to prove that it did not, 57, 71.

criminal liability for, 80.

decisions in former regulations, how far now applicable,
52, 71.

effect of, on rights of shipowner up to 1846...53 *seq*.

1846 to 1851...54.

1851 to 1863...54 *seq*.

1863 to 1873...56 *seq*.

1873 to 1911...58 *seq*.

since 1911...69 *seq*.

INFRINGEMENT OF THE REGULATIONS—*continued*.

- involved liability only if contributed to collision up to 1873
 - ...54, 56, 58.
 - unless necessary, or could not by possibility have contributed, 1873 to 1911
 - ...58.
 - only if contributed to collision since 1911
 - ...69 *seq.*
 - "necessary to avoid immediate danger," justifiable, 63 *seq.*
 - onus of proving necessity, 65.
 - opportunity of complying with regulations, no infringement until, 61.
 - ordinary care, failure to exercise, to avoid consequences of an infringement by other vessel, effect on liability up to 1873...56 *seq.*
 - 1873 to 1911...58 *seq.*
 - since 1911...69 *seq.*
 - reasonable compliance with, as to lights required, 66.

INJURY TO PERSON,

- action *in rem* can now be brought for, 155, 280.
- liability for, 113.
- Workmen's Compensation Act, whether awards for, under, can be recovered in collision action, 115, 281.

INSCRUTABLE FAULT, incidence of loss in case of, 3, 50.

INSPECTION,

- power of Admiralty Division to order, 273.
- exercised, 273, 322.
- refused, 273.

INSURANCE,

- assured can recover damages after payment by insurer, 133, 259.
- assured not trustee for insurer of damages recovered, 258.
- average contribution for collision, none, 260, 264.
- case of collision between ships of same owner, 259.
- by fault of insured ship, 251, 252, 255, 256.
- with or without fault in either or both ships, 251.
- demurrage expenses caused by collision, 252.
- division of loss, single liability, 150, 255.
- fishing nets, damage to, without collision with vessel, 254.
- insurance against negligence not illegal, 256.
- nor against risks beyond statutory liability, 190.
- insurers liable for damages paid by tow for damage by tug, 255.
- subrogated to rights of assured, 114, 257.
- cannot recover when assured cannot, 259.
- sue in name of assured, 114.

INSURANCE—*continued*.

loss after voyage insured by damage done during voyage,
257.

Lloyd's policy, form of, 253.

"running-down" clause, 150, 252, 254, 255.

sunken wreck, cost of raising, 254.

damage by, 252.

INTEREST. See *Damages*.

Admiralty practice as to, 119.

on damages added to amount of statutory liability, 187.

principles on which interest allowed, 119.

INTERNATIONAL CONVENTION,

Collisions Convention, translation of, 550.

Convention on Safety of Life at Sea, provisions in, affecting
the Collision Regulations, 489.

INTERROGATORIES, practice as to, 272.

JOINDER OF Co-DEFENDANTS,

when reasonable doubt as to who is liable, 282.

JURISDICTION. See *Admiralty Jurisdiction*.

collision in foreign country, 220, 225.

with pier abroad, 222.

criminal, for collision, 260 *seq*.

of common law Courts for collision on high seas, 219 *seq*.

plaintiff and defendant aliens, 220.

JUDGMENT,

balance for, where both to blame, 149.

by default, when service of writ but no arrest, 286.

foreign, bar to action in this country, when, 233.

whether enforceable in Admiralty, 235.

inadmissible in evidence, 234.

in personam bar to action *in rem*, 234.

pleading judgment at law in Admiralty, 270.

res judicata, plea of, 233, 270.

JURY, assessment of damages by, Lord Campbell's Act, 285.

KEEP HER COURSE AND SPEED,

cases illustrating Art. 21...395 *seq*.

meaning of expression, 391.

duty of one of two crossing steamships to, Art. 19...398.

sailing ship to, 370, 389, 390, 395.

vessel under Art. 21...390, 391, 392.

to act under Art. 21, *note*, 394.

such action must not be premature, 394.

in winding river, 391.

meeting warships, 439 *seq*.

rounding point, 392.

KEEP HER COURSE AND SPEED—continued.

- duty of, subject to exception of special circumstances, 393.
 - where two ships approaching pilot vessel, 391.
- how ship hove-to is to, 394.
- overtaken ship to, Art. 24...416.
- ship by the wind may luff a little, 395.
- reefing before risk of collision determined, 374.

KEEP OUT OF THE WAY,

- duty of merchantman meeting warships, 439 *seq.*
 - tug with heavy ship in tow, 446.
 - vessel not under command, 326, 444.
- how ship is to, Art. 22...399.
- must not cross bows of other ship, 399.
- overtaking ship, Art. 24...416.
- presumption against ship whose duty is to, 47.
- ship lying with engines stopped, 386.
- slacken speed, stop or reverse, if necessary, Art. 23...400.
- steamship and sailing ship, 386 *seq.*
- trawler with trawl down, of, 337.

KING'S SHIP,

- arrest, not subject to, 109, 280, 346 *note.*
- collision with, liability, 76, 77, 109.
- fleet meeting merchantman, 439 *seq.*
- Government ships, registration of, as British ships, 346.
 - application of Merchant Shipping Acts to, 346.
- regulations, not bound by, 346.
 - King's, identical with, 347.
 - infringement of, negligence, 347.
- ship requisitioned by Government, arrest of, 280.
- special lights for ships of war, Art. 13...346.
- whether duty to keep out of way of, 439 *seq.*

LAUNCH,

- damage by, is by "improper navigation," 187.
 - limitation of liability, 187.
 - when of unregistered ship, 179.
- rule of division of loss applies, 146.
- special precautions required at, 4, 481.

LAW. See *American Law*; *Common Law*; *Foreign Law*; *Maritime Law*.

LAYING-TO. See *Hove-to*.

LEX FORI,

- limitation of liability, whether is, 229 *note.*
- Maritime Conventions Act, 1911...230.
- priority of claims, judged by, 226.
- rule as to application of, 220.
- rule of division of loss, whether is, 144.
- statutory rules as to presumption of fault were, 75.

LEX LOCI,

- collision abroad, liability for negligence of agents, 224.
 - with pier abroad, 222.
- limitation of liability, whether is, 229 *note*.
- rule as to application of, 220, 225.
- rule of division of loss, whether is, 144.

LIABILITY. See *Carrier*; *Harbour Authorities*; *Dock-owners*.

- abandoned ship, liability of owners of, 103.
- American law as to liability of ship as distinguished from owner, 101.
- average contribution, none for collision, 260, 264.
- civil law, by, 77.
- collision, none created by mere fact of, 1, 40.
- charterer and owner, as between, 84.
- common law, at, for damage at sea, 219 *seq*.
- co-owners, as between, 110, 111.
- for damage by collision abroad, 103, 219, 220, 224.
 - between ships of same owner, 111, 115.
 - with a lightship, 133.
- for damage by foreign public ship, 109.
 - King's ship. See *King's Ship*.
 - a launch, 4, 481.
 - parting of moorings, 21, 22, 108.
 - ship abandoned, 103.
 - sunken ship, 103.
 - to pier or harbour works, 83, 93.
- for acts of agent, 83, 84.
 - expense of removing sunken wrecks, 106.
 - fault of compulsory pilot, 236, 237.
 - insufficient moorings, 21, 108.
 - interest and costs beyond statutory amount, 187.
 - loss of life or personal injury. See *Loss of Life*; *Personal Injury*.
 - negligence. See *Negligence*.
 - servants acting as volunteers, 79.
 - wilful injury, 40, 79, 99, 233.
- foreign law, by. See *Foreign Law*.
- in case of collision by fault of third ship, 17, 18.
 - infringement of the regulations. See *Infringement of the Regulations*.
 - joint wrong-doers, 110. See *Wrong-doers*.
 - no fault in either ship. See *Inevitable Accident*.
- limitation of. See *Limitation of Liability*.
- loss of ship does not discharge owner from, 110.
- maritime law, by the, 102.
- mere ownership creates none, 73.
- of actual wrong-doer, 76, 79, 82. See *Wrong-doer*.
 - cargo-owners, 90, 110.
 - charterer, 80, 84.
 - employer of wrong-doer, 83.

LIABILITY—*continued.*

- of foreign sovereign. See *Sovereign*.
- foreign vessel for negligence of crew, 223.
- freight, 90.
- harbour authority, 105 *seq.* See *Harbour Authority*.
- master, 76.
- owner for damage by his vessel, 78 *seq.*
 - sunken vessel, 103, 110.
 - to charterer, 245 *seq.*
 - compulsory pilot by fault of crew, 223.
 - crew, 115.
 - piers, &c., 83, 93.
 - for negligence of officers and crew, 77, 78, 79.
 - where vessel is chartered, 80 *seq.*
 - where vessel is demised, 78, 80, 82.
 - whether co-extensive at common law and in Admiralty, 86, 87, 97 *seq.*
- part owners, 110.
- persons other than shipowner, 83, 84.
- pilot, 76, 242.
- pilotage authority for pilot's negligence, 108.
- salvor, 24, 79.
- ship in Admiralty, as distinguished from owner, 85 *seq.*, 97.
- tug and tow, respective liabilities of. See *Tug and Tow*.
- underwriters. See *Insurance*.
- unregistered British ship, 179.
- wrong-doer, actual, of, 76, 79, 82. See *Wrong-doer*.
 - of employer of, 83.
 - though claimant insured, 133, 259.
- unlimited liability, cases of, 84, 178, 181, 182, 183.
- where both ships in fault. See *Division of Loss*.
- where pilot on board. See *Compulsory Pilot*.
- Workmen's Compensation Act, liability of owner of wrong-doing ship for payments made by the other owner under, 115, 280.

LIEN, DAMAGE,

- generally, 87 *seq.*
- American law as to, 101.
- assignment of, 96.
- attachment of, to what, 90 *seq.*
 - to freight, 91.
 - to ship's tackle and equipment, 90.
 - not to cargo, 90.
 - except to compel payment of freight, 90.
 - where collision in body of a county, 91, 93.
 - collision with a landing stage, 92.
 - damage but no collision, 92.

LIEN, DAMAGE—continued.

- attachment of, where ship owned by company in liquidation, 94.
 - two or more actions for same collision, 94.
 - jurisdiction in Admiralty by statute, 94.
- discharge of, 96.
- duration of, after death or bankruptcy of owner, 89, 94, 96.
- extent of, 90 *seq.*
- for damage by or to a non-seagoing barge, 93.
 - to pier or harbour works, 83, 92, 93.
 - to things other than ships, 92.
- foundation of, 88.
- liability of ship and owners, how far concurrent, 86, 87.
- none for damage by carrier to cargo, 91.
- postponement to subsequent salvage lien, 94.
- precedence to liens arising from contract, 93.
- priority of liens, 93, 94.
- Statute of Limitations, not barred by, 89, 96.
 - but now limitation of time for commencing suit, 89, 96.

LIFE, LOSS OF. See *Loss of Life*.

LIFE SALVAGE, damages not subject to claim for, 133.

LIGHTSHIP,

- limitation of liability in case of collision with, 182.
- penalty for injuring, 133, 182.
- riding by, 469.

LIGHTS, SHIPS,

- Admiralty orders as to, in war-time, 443.
- bad weather, when, cannot be carried for, Art. 6...328.
- Board of Trade instructions as to, 321.
- burden of proof as to, 42, 50, 315.
- carried in the rigging, 322.
- clear night no excuse for absence of, 317.
- dredging with anchor, for vessel, 320, 474.
- duty to equip ship with proper, 316.
- failure to carry proper, a misdemeanour, 317.
- fisherman's flare, 335, 339.
- for boats and small craft, Art. 6...328; Art. 9...330.
 - dumb-barge being towed, 328.
 - fishing vessels and boats, Art. 9...333 *seq.*
 - King's ships, Art. 13...346.
 - line fishermen, 334.
 - overtaken ship, Art. 10...339 *seq.*
 - pilot boats, Art. 8...331.
 - sailing ships, Art. 5...327.
 - sailing ship hove-to, 325.
 - towing, 324.
 - ship's use, visible outboard, 314.

LIGHTS, SHIPS'—*continued.*

- for steamship under way, Art. 2...318 *seq.*
 - towing, Art. 3...323 *seq.*
 - under sail, Art. 14...320.
- telegraph ships, 324.
- trawlers, 335, 338.
- vessel ashore, Art. 11...342.
 - at anchor, Art. 11...319, 320, 341 *seq.*
 - dredging with tide, 320, 474.
 - in tow, Art. 5...327.
 - not under command, Art. 4...324.
 - tied up to wharf, 319.
 - under convoy, Art. 13...346.
- wrecks, 315.
- flare or detonating signal, Art. 12...314, 345.
- how to be carried, 321.
- indication of direction of ship's head by, 308.
- infringement of regulations, as to, 66, 321, 322.
- inspection of, by Court, 322.
- local rules as to. See Appendix II., 503.
- lost in previous collision, 316.
 - must be replaced, 315.
- maritime law, whether obligation to carry, by, 314.
- mast-head lights for steamships, 318.
- misleading lights, 313, 315, 316, 332.
- must be carried in positions required by law, 321.
 - from sunrise to sunset, 313.
- obscuration of, 316, 321, 343, 365.
- other than regulation, 314.
- powers to enforce carrying, 318.
- punishment for not carrying, 317.
- range of, 318, 322.
- range lights for steamships under way, 319.
- regulations for, 313 *seq.*
 - must be obeyed with reasonable strictness, 66, 321.
- riding lights, Art. 11...341.
- screening, 321.
- ship ashore, duty to light, 314.
 - dredging stern first, 320, 474.
 - with improper lights may be stopped, 318.
- shipowner responsible for proper lights being carried, 318.
- side lights, Art. 2...318; Art. 5...327.
- smoke, obscuration by, 365.
- spare lights, absence of, 316.
- special lights required by local rules, &c., 317, 344.
- stern light, Art. 10...339.
 - on towing vessel, Art. 3...323.
- sunken ships, duty to light, 314, 315.
- taken down to be trimmed, no excuse, 315.
- "visible," meaning in regulations, 313.
- wrong lights, 313, 315.

LIMITATION OF LIABILITY. See *Limitation of Liability, Action for.*

"actual fault or privity," 181.

analogy of noxal action and of deodand, 172.

applies to all ships, and in all waters, 180.

injuries to craft, persons, or goods afloat, 182, 183.

damage to property and rights ashore, where, 183, 184.

lightships, 182.

damages under Lord Campbell's Act, 185.

amount recoverable for loss of life, 186, 188.

assessment of damages before limitation action not binding, 191.

bail given for amount exceeding owner's statutory liability, 95.

based on protection, 172.

bottomry bond-holder, his right to share, 192.

cargo, does not affect liability of, to arrest, 183.

charterers by demise may limit, 84, 180.

Crown, as against, 182.

proof by, 191.

definition of "ship," 178.

depends on statute, 170.

dumb-barge, whether liability of owner of, unlimited, 178.

effect in combination with division of loss rule, 173, 190.

of some claims being settled or paid before, 191.

excluded by contract, may be, 180.

foreign law, liability on master's contracts, 171.

foreign ships, of, 228.

tonnage, how calculated, 189.

history in English law, 173 *seq.*

how protection is obtained, 190, 282.

improper navigation, meaning of term, 186.

damage to tow by tug while towing is caused by, 187.

also damage by a launch to vessel afloat, 187.

insurance against risks beyond limit, valid, 190.

liability of actual wrong-doer unlimited, 77, 181.

not purged by payment of statutory liability, 188.

co-owners, one in fault, 181.

dock, &c. authorities, 180, 183.

licensed pilot, 183.

owner navigating own ship unlimited, 181.

of a vessel, which is not a "ship," 178.

single ship company, 190.

for interest and costs in addition, 187.

damage to lightship, 182.

of railway company carrying in ship of other owners, 182.

LIMITATION OF LIABILITY—continued.

- liability, where more than one collision, 184.
- lex fori*, whether, 229 *note*.
- limits of liability, 188.
- loss of life, amount recoverable, 186, 188.
- losses in respect of which limitation can be obtained, 183.
- maritime or Roman law, none by, 170.
- owners who are entitled to, 178, 179.
 - entitled to, in contract and in tort, 184.
 - of ship foreign at date of collision, but purchased by British subject, 179.
 - not discharged by sinking of ship, 185.
 - unregistered British ship, none, 179.
 - statutory exceptions, 179.
- persons entitled to, 178.
- policy and justice of Acts discussed, 175.
- priorities of claimants for loss of life and loss of goods, 188.
- proof by Crown, 191.
 - by holder of bottomry bond, 192.
- register not conclusive as to ownership, 180.
 - tonnage, 189.
- "ship," definition of, 178.
- successive actions by cargo-owners and shipowners, 284.
- tonnage, calculation of, 188.
- tug and tow, measure of liability, 185. See *Tug and Tow*.
- unlimited liability, cases of, 84, 178, 181, 182, 183.
- without actual fault or privity, meaning of, 181.

LIMITATION OF LIABILITY, ACTION FOR,

- admission of liability, whether, must be, 283.
- cargo-owner, issue whether one or both ships in fault, 283.
- costs of, 283, 294.
- discontinuance of original action, effect of, 284.
- evidence by affidavit, 283.
- general course of, 190, 282.
- may be claimed by defence or counterclaim, 282.
- payment out of Court, 283.
- proof against fund in Court, estoppel, 284.
- transfer of action, 284.

LIMITATION, STATUTES OF,

- damage lien not barred by, 89, 96.
 - but injured party must take proceeding in limited time, 89, 96.
- dock, &c. authority against, 108, 277.
- limitation under Maritime Conventions Act, 1911...89, 96, 133.
- loss of life, for, under Lord Campbell's Act, 133.

LOCAL RULES OF NAVIGATION,

- applicable in conjunction with sea regulations, 301, 487.
- customary track in winding rivers, 427, 487.

LOCAL RULES OF NAVIGATION—*continued.*

effect of, on questions of negligence, 5, 485.

foreign waters, in, 486.

for American inland waters, 486.

Canadian Great Lakes, 503.

Clyde, 513.

Humber, Trent, Ouse, 515.

Manchester Ship Canal, 523.

Mersey, 524.

Suez Canal, 527.

Tees, 528.

Thames, 531.

Tyne, 546.

ignorance of, no excuse, 485 *note*.

inconsistent with sea regulations, where, 300, 487.

power to make, 486.

saving clause as to, Art. 30...484.

Log,

coastguard, lighthouse, and lightship, 271.

official log, 271.

ship's log evidence against, not for, ship, 271.

though mate dies after collision, 271.

LONDON TRINITY HOUSE, regulations of, 1840...53, 297.

LOOK-OUT,

absence of, not causing collision, 454, 458.

American cases, 456.

anchor watch, 454.

astern, 455.

craft moored to shore, on, 456.

crowded waters, in, 455.

duty as to, generally, 453.

of tug and tow to keep, 201, 204, 455.

glasses, use of, 456.

local rules may impose extra obligation on, 456.

not to be employed on other duty, 454.

station for, 454.

vessel coming out of dock for, 456.

LORD CAMPBELL'S ACT. See *Campbell's Act, Lord.*LOSS, DIVISION OF. See *Division of Loss.*LOSS OF LIFE. See *Campbell's Act, Lord.*

criminal liability for, 260.

damages for, 133.

limit of liability in case of, 186, 188.

priorities of life claimants in limitation action, 188.

LUFFING, 370, 372.

LYING-TO. See *Hove-to.*

MAIL SHIPS,
 arrest of, 232.
 speed of, 359.

MAN-OF-WAR. See *King's Ship*.

MANCHESTER SHIP CANAL,
 collision regulations do not apply in, 300.
 local rules, 523.

MARITIME CONVENTIONS ACT, 1911,
 for effect of, see subject headings.
 extent of application of, 230.

MARITIME LAW,
 division of loss, whether a rule of, 136.
 liability for negligence by, 102, 223.
 of shipowner by, 223.
 limitation of, probably none by, 146.
 overtaking ship to keep out of the way, 418.
 ship's lights, as to, 314, 342.

MARITIME LIEN. See *Lien, Damage*.

MASTER,
 co-owner, limitation of liability, 77.
 duty of, as to standing by, after collision, 72.
 when pilot in charge, 238 *seq.*
 with regard to cargo injured by collision, 124.
 fellow servant of crew, whether, 115.
 liability of, for acts of crew, 76.
 for breach of regulations, 76, 261.
 as carrier, 76, 250.
 for pilot, 77.
 on bond given to save arrest of ship, 285.
 salvage within scope of master's employment, 79, 209.

MEASURE OF DAMAGES. See *Damages*.

MEETING STEAMSHIPS,
 direction of head, not course over the ground determines
 which rule is applicable, 380.
 distinguished from "crossing" and "overtaking" ships,
 379.
 "end on, or nearly end on," meaning of term, 381.
 lying dead in water, whether Art. 18 applies to vessel, 379.
 rule for, Art. 18...377, 380.
 does not apply in Thames, 382.
 to a vessel rounding a point, 382.
 winding river, in, 382.

MERSEY, local rules, 524.

MID-CHANNEL, meaning of term, Art. 25...422.

MISDEMEANOR. See *Criminal Liability*.

- endangering life or ship, 260.
- infringing regulations, 80, 261, 317.
- injuring lightship, 265.
- neglect to carry lights, 317.
- not standing by to assist, 72.

MISLEADING,

- by hailing or whistling, 14.
- by improper lights, 313, 315, 316, 332.

MOORINGS,

- insufficient, in dock, penalty for, 464.
- liability for, 461, 463.
- making fast to other craft, 465.
- parting of, 16, 20, 108.
- ship at, to carry riding light, 342.

MUD,

- vessel dragging through, is under command, 325.
- whether vessel reversing propeller to clear, must whistle, 451.

NARROW CHANNEL,

- application of crossing rule in, 384, 427.
- buoys in, misleading, 431.
- consequence of infringement of starboard side rule in, 422.
- duty of vessel entering, 424, 425.
- "fairway," what is the, 423.
- former Acts, under, 421.
- meaning of expression, 422.
- navigation of a winding river, 427 *seq.*, 487.
- passing a ship ahead in, 419.
- raising swell in, 481.
- speed in, 481.
- starboard side rule, Art. 25...421.
- does not override local rules, 425, 428.
- system of buoyage in, 431.
- tide, difficulties caused by, to approaching vessel must be regarded, 473.
- drifting on, with anchor on ground, 470.
- warps across, duties as to, 474.

NAVIGATION, IMPROPER. See *Improper Navigation*.**NAVIGATION, RULES OF.** See *Regulations; Local Rules*.**NAVY.** See *King's Ship*.**NEGLIGENCE.** See *Inevitable Accident; Foreign Law; Foreign Ships*.

- generally, 1 *seq.*
- Admiralty, in, the same as at law, 28.

NEGLIGENCE—*continued*.

- after collision, 122, 123, 124.
- neglect to beach, 124.
- agony of collision, wrong step taken in, not, 12.
- anchor, collision with ship at. See *Anchor, Ship at*.
- basis of action for damages by collision, 1, 2, 49, 102, 223.
- blind corner, rounding, 480.
- breach of regulations is, 5.
- careless management of thing likely to do damage, 45.
- causa proxima non remota spectatur*, 17, 27, 30 *seq*.
- causing collision, 1, 18, 25, 30 *seq*.
 - which makes second inevitable, 17.
 - collision between other vessels, 91.
 - loss by reason of act of third party, 17, 18.
 - the loss but not the collision, 2, 26.
- collateral, not causing the loss, 25.
 - when with ordinary care the other party could have avoided the collision notwithstanding, 30 *seq.*, 39 *note* (h), 56.
- collision, fact of, no evidence of negligence, 1, 40.
- consequences of, not got rid of by paying amount of statutory liability, 188.
 - by sinking of wrong-doing ship, 185.
 - by maritime law, 102.
- contributory, effect of, 29.
 - Maritime Conventions Act, 1911...29.
 - no difference between Admiralty and common law as to what is, 30.
 - when common rule applied in Admiralty, 287.
- compulsory pilot, of, now no defence. See *Compulsory Pilot*.
- crew, insufficiency of, 458.
- crossing lines of traffic, 478.
- damage but no collision, 38.
- defective equipment, 15, 45, 205.
- defined, 3.
- dilemma, in a, taking course involving least risk, 4.
- division of loss, rule as to, does not affect question what is, 30 *seq*.
- equal negligence in both ships, discussion of, 36 *seq*.
- excessive speed negligence, apart from regulations, 413.
- excuse for, that other ship negligent, no, 8.
 - stress of weather, 475.
- fact, always a question of, 2, 27.
- harbour or dock-master, of, 242.
- heaving-to in track of ships, whether, 373.
- infringement of regulations, is, 6, 7.
- insurance against, not illegal, 256.
- large craft meeting small, 483.
- launch, at a, special care required, 4, 481.

NEGLIGENCE—*continued.*

look-out, in. See *Look-out.*

non-compliance with regulations or lack of good seaman-
ship is, 5.

local rules is, 5.

officer in charge, absence from deck, 459.

ordinary care and skill required, 3, 4, 5, 7, 12, 19, 36.

where by exercise of, danger arising
from negligence of the other ship
could have been avoided, 30 *seq.*,
39 *note (h)*, 56.

peculiar construction, vessel of, warning to be given, 478.

pilot, of, 236, 242.

presumption of, 45, 47 *seq.*, 210.

that subsequent loss was caused by the colli-
sion, 120, 121.

proof of, burden on plaintiff, 2, 40.

shifting of, 41.

failure to hear fog signal, 48.

primâ facie, what is, 42, 45.

absence of contributory, whether plaintiff must
give, 46.

without, no cause of action, 1, 2, 49.

repairing injury after collision, in, 123.

rounding blind corner, warning before, 480.

salvage remuneration not recoverable for assistance ren-
dered by vessel to blame for collision, 262.

salvor, in a, 24, 263.

seamanship the test of, when regulations inapplicable, 8.

ship unmanageable by own fault, 16.

smelling the ground, when risk of, special precautions re-
quired, 475.

standing too close to other craft, 475.

sunken ships, as to, 103, 110.

tug, in a, 25, 262. See *Tug and Tow.*

in not employing, 27, 37, 122.

unusual course adopted at own risk, 472, 477.

wilful injury, damage by, 40, 79.

NETHERLANDS, LAW OF, compulsory pilotage, as to, 241.

NEWFOUNDLAND, Maritime Conventions Act, 1911, adopted by,
75, 230.

NEW ZEALAND, DOMINION OF, Maritime Conventions Act, 1911,
adopted by, 75, 230.

OUSE, RIVER, local rules for, 515.

OVERTAKEN SHIP,

- "approaching" the other within Art. 23, not, 412.
- crossing ship may be, 383.
- duty of, to keep her course, Art. 21...390, 418.
- to show light astern, Art. 10...339.
- what is an, 341, 383.

OVERTAKING SHIP,

- cases illustrating Art. 24...419 *seq.*
- "crossing" ship may be, 383.
- duty to keep out of the way, Art. 24...416, 418.
- a rule of maritime law, 418.
- when passing another in a narrow channel, 419.
- of ships turning to windward in company, 420.
- must be going faster than ship ahead, 418.
- sailing ship overtaking steamship, 416.
- sailing ships cross tacking, 420.
- what is, 416.

OWNER OF CARGO. See *Cargo Owner*; *Carrier*.**OWNERS OF SHIP.** See *Carrier*.

- abandoned ship, of, liability of, 103.
- "actual fault or privity of," meaning of term, 181.
- Admiralty, liability in, when not at law, 85 *seq.*
- chartered ship, liability for damage by, 80 *seq.*, 250.
- charterer, liability to, for loss, 250.
- collision between ships of same owner, 111, 152, 248.
- common law, liability at, 77, 245.
- compulsory pilot, liable for negligence of, 236, 237.
- crew, acts of, within scope of employment, liable for, 78, 79, 80.
- wilful and criminal acts of, whether liable for, 79.
- demised ship, of, not liable, 82.
- foreign. See *Foreign Law*; *Foreign Ship*.
- service of writ on, 222.
- limited liability of. See *Limitation of Liability*.
- loss of ship, no discharge from liability, 110.
- maritime law, liability by, 223.
- negligence of themselves, their servants or agents the foundation of liability for collision, 77 *seq.*
- part owners. See *Part Owner*.
- passengers, injury to, liability for, 246.
- pilot, liability for acts of, 236.
- primâ facie* liable as employers of crew, 78.
- pro hac vice* owners, liability of, 78.
- qua* owners, not liable, 78, 82, 83.
- resident abroad, liability of, 222.
- Roman Law, liability by, 77 *note*.
- unregistered, liability of, 179.
- recovery by, 113.
- wrongdoer, can recover over against the actual, 52.

OYSTER BED, damage to, 92 *note*, 287.

PART OWNERS,

- collision between ships owned in part by same persons, 111.
- contribution between, 110.
- damage to cargo, action for. See *Cargo; Cargo Owner*.
- several liability of, 110.
- successive actions by, 112.
- survival of action, in case of death of a, 114.
- wrong-doing master a, liability of, 181.

PARTNERS,

- liability of, for collision, 83.
- unlimited when not shipowners, 84.

PERILS OF THE SEA. See *Bill of Lading*.

- collisions within exception of, 247.
- reason for departure from regulations, 14.

PERSONIFICATION OF SHIP, a common, but sometimes misleading practice, 1, 85.

PERSONS ENTITLED TO RECOVER, 112 *seq.*

- bailees, 112.
- common employment, doctrine of, 111, 115.
- compulsory pilot not in common employment with the crew, 115.
- indorsee of bill of lading, 112.
- insurers, 114.
- persons injured and owners of cargo on wrong-doing ship, 112, 114.
- representatives of persons killed. See *Campbell's Act*.
- unregistered owners of injured ship, 113.

PIER,

- damage to pier abroad, 222.
- liability for damages to, 83.
- lien for damage to, 92.

PILOT. See *Compulsory Pilot*.

- actions against, jurisdiction, 277.
- duties of pilot and master, 238 *seq.*
- liability of shipowner for negligent acts of, 236.
- when actual wrongdoer, 76, 242.
- signals for, 317.

PILOT BOAT,

- answering flare of, 333.
- collision with, 332.
- duties *inter se* of vessels making for, 391, 446.
- "engaged on her station," lights, 332.
- lights of, Art. 8...331.
- signals for, 317.
- stern light on, whether permitted, 322.

- PILOTAGE AUTHORITY** not liable for pilot's negligence, 242.
- PLAINTIFFS**, who may be. See *Persons Entitled to Recover*.
- PLEADINGS**. See *Practice*.
- PORT HELM**,
 effect of port helm with propeller reversing, 414.
 old rule as to, 378.
 rule of, only applicable to steamships meeting end on,
 Art. 18...377.
 both ships must port, 380.
 does not apply to sailing ship meeting steamship,
 380.
- PORT TACK**, duty of ship on, Art. 17...367 *seq.*
- PRACTICE OF SEAMEN**,
 evidence as to, 273.
 inconsistent with regulations illegal, 10.
 navigation of winding rivers, as to, 427, 487.
- PRACTICE: COLLISION ACTIONS**,
 action at law supplemented by proceedings *in rem* and
 vice versâ, 278.
 and in Admiralty for same matter not
 allowed, 275.
 against pilot, 277.
 Dublin Steam Packet Co., notice, 277.
 address on writ, 266.
 Admiralty jurisdiction of High Court, 286, 287.
 County Courts, 288.
 other Courts, 288.
- arrest of wrong ship, 279.
 after undertaking to give bail, 280.
 not necessary to found jurisdiction *in rem*, 286.
- assessors, their functions, 273, 274.
 difference of opinion between them, 274.
- Board of Trade, of, as to supplying depositions, 271.
- Cinque Ports, Admiralty jurisdiction of Court of, 288.
- co-defendants, joinder of, 211, 282.
- co-owners all liable to surety to bond given by one, 285.
- consolidation of actions, 275. See *Consolidation*.
- County Court action, transfer of cross action, 277.
- cross actions, stay when one ship only arrested, 276.
 one in County Court, 277.
- damages assessed by registrar and merchants, 285.
 in excess of *res* or bail, 278.
- default of appearance, judgment, 286.
- defence, contents of, 269.
- discovery and inspection of documents, 273.
- evidence. See *Evidence*.
- infringement of regulations must be specifically alleged,
 269.

PRACTICE: COLLISION ACTIONS—*continued*.

- inspection, order as to, 273.
- interrogatories, 272.
- joinder of co-defendants when reasonable doubt as to who is liable, 282.
- judgment by default after service but before arrest, 286.
 - form of, when both ships to blame, 150.
 - not limited to value of arrested ship, 95.
 - pleading, 270.
- limitation of liability. See *Limitation of Liability, Action for*.
 - may be claimed by defence or counter-claim, 282.
 - time for enforcement of rights, 89, 96, 133.
 - against Harbour Boards and other public authorities, 108, 277.
- loss of life, action *in rem*, 280.
 - assessment of damages under Lord Campbell's Act, 285.
- lying-by to await result of previous action, 276.
- master, liability on bond given by him to save arrest of ship, 285.
- owners suing as such need not be named, 267.
- pleading contributory negligence, 270.
 - defence, 269.
 - infringement of regulations, 269.
 - judgment, 270.
- preliminary act, 267, 268.
 - statements in, are admissions, 268.
 - when necessary, 267.
- proof must be *secundum allegata*, 268.
 - of regulations, 272, 298.
- public authorities, action *in rem* against, 277.
 - limitation of actions against, 277.
- re-arrest of ship for sum in excess of bail, 95, 279.
- res judicata*, 270, 275.
- right to begin, 273.
- rules in force, the, 266.
- seamanship, evidence of experts, 273.
- separate actions for injury to person and property, 277.
- stay of proceedings, one ship only arrested, 276.
 - refused in successive actions, 284.
- successive actions by shipowner and cargo owner, stay, 284.
- third party procedure, 210, 281.
- transfer of actions, King's Bench to Admiralty Division, 284.
- winding-up order; after, leave to proceed in Admiralty required, 94.
- writ, address of, 266.
 - service, by whom, 267.
 - out of the jurisdiction, 266.
 - within jurisdiction required, 222, 266.

PRECAUTIONS,

- fishing grounds, when passing over, 472.
- in fog. See *Fog*.
- launch, at, 4, 481.
- neglect of ordinary precautions negligence, 3 *seq.*, 12, 19, 36.
- ship of unusual construction, by, 478.
- being navigated in unusual manner, by, 472, 477.
- special precautions in special circumstances, Art. 29... 452 *seq.*

PRESUMPTION OF FAULT, STATUTORY. See *Infringement of Regulations*.

- abolished by Maritime Conventions Act, 1911...33, 52.
- American law as to, 75.
- applicability of decisions in former regulations affected by the statutory provisions in force, 52, 71.
- first enacted, 1862...57.
- history of enactments imposing statutory liability for infringing regulations, 52 *seq.*
- infringement of any relevant regulation involved liability from 1873 to 1911...58.
- unless proved that it could not by possibility have caused collision, 58.
- made more stringent, 1873...58 *seq.*
- Solent, in, still in force for breach of regulations, 69.

PRIORITY,

- liens, of, 93, 94.
- limitation action, in, 183.

PROCEEDINGS IN REM. See *Lien, Damages*.

- generally, 1, 85.
- against barge, which is not a ship, within a county, 93.
- King's ship, 109, 280, 346 *note*.
- public authorities, limitation, 277.
- ship of foreign sovereign, 230.
- tug, for negligent towage, 210.
- arrest involved unless bail given, 88.
- damage but no collision, in case of, 91.
- to cargo by carrier, 91.
- jury, in, 285.
- lien, in some cases where no, 91.
- loss of life and personal injury, for, 280.
- ship liable in, where owner not *in personam*, 94, 97.
- supplemented by common law action, and *vice versa*, 278.

PROOF. See *Evidence; Burden of Proof; Practice*.**PROPELLER,**

- effect of, on ship, when reversing, 414.
- moving, in dock, 474.

PROTEST, evidence against, but not for, ship, 271.

PUBLIC AUTHORITIES,

special limitation of actions against, *in rem* none, 277.
in personam, 108.

RAFT,

collision with, 45 *note*, 474, 479.
 unwieldy, damage by, 45 *note*, 213.

RAILWAY COMPANY, liability of, when carrying by sea, 182, 249.

RECOVER. See *Persons entitled to Recover*.

REFERENCE TO REGISTRAR,

costs of, do not follow result of action, 292.
 damages referred, but Court may decide question as to,
 raised in pleadings, 285.
 exorbitant claim, 293.

REFUSAL TO MOVE,

dock, in, 474.
 launch, at, 482.

REGISTRAR. See *Reference to Registrar*.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA. See
*Infringement of Regulations; Negligence; Presumption
 of Fault.*

where to find London Trinity House Regulations of 1840...
 54.

Admiralty Regulations of 1848...54.
 1852...55.
 1858...55.

Regulations of 1863...56:
 1880...312.
 1884...312.
 1897...312.
 1910, set out 491.

alteration of course, causing risk, 39, 307.
 for safety, where no risk, 309.
 in fog, 308.

application of, in waters where local rules in force, 300.
 limited to waters connected with the sea,
 300.

in rivers, 299.

to British Colonial ships, 297 *note*.

foreign ships, 297, 298, 302.

King's ships and foreign public ships,
 346, 347.

large ships meeting small, 483.

merchantmen meeting warships, 439.

steamships lying dead in the water, 379.

vessels approaching fishing vessels, 337.

hove-to, 372, 386, 394, 460.

which are not "ships," 301.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA—*continued.*

- application of, until risk is determined, 310.
 - ships are clear, 311.
 - where application will cause risk of collision, 307, 436.
 - collision is inevitable, 305, 407.
 - course of other ship unknown, 306, 307, 308.
 - there is risk of collision, 304 *seq.*
- authority to make, scope of, see validity, *infra.*
- construction of, uniformity in the, desirable, 302.
 - rule for the, 303.
 - Art. 27, whether it applies to Art. 28... 448.
- departure from, *prima facie* negligence, 5.
 - burden of proof, when departure proved, that it was justifiable or excused, 65, 445.
 - that it caused collision, 57, 71.
 - a breach of a statutory duty, 4, 52 *seq.*
 - therefore imposes liability, if in fact a wrong manoeuvre, 62, 433 *seq.*
 - sanctioned in special circumstances by Art. 27...432.
 - formerly also by statute, 432.
 - instances of special circumstances, 328, 433 *seq.*
 - when a duty, 11, 433, 441.
 - rigid adherence to, will cause collision, 11, 436, 437.
 - justifiable, 7, 11 *seq.*, 432 *seq.*, 441.
 - justifiable in case of necessity, 7, 63 *seq.*, 434.
 - where departure only hope of saving collision, 63, 65.
 - collision inevitable, and departure made to minimise damage, 63, 305, 433, 443.
 - obedience involves serious danger, 14, 443, 446.
 - departure invited by other ship, 14.
 - excused, where other ship causes a sudden peril, 12, 13.
 - rule does not appear to apply, 14.
 - vessel unable to comply, 15, 47, 68, 444.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA—*continued*.

- departure from, excused, even if inability caused by previous fault, 16, 68.
 - aliter*, if inability caused by want of look-out or other immediate negligence, 68.
 - not excused, on ground of convenience, 10, 446, 447.
 - or of compliance with inconsistent custom, 10.
 - remoteness of danger, 11.
 - fear that other ship will not follow regulations, 434.
 - because other ship did not follow the regulations, 447.
 - when adherence would have prevented collision, 434, 447.
- discretion as to obeying, none where applicable, 7, 11, 63, 434.
- duty to obey on both ships, 8, 47, 434.
 - promptly and effectually, 9, 434.
 - a statutory duty, 4.
 - avoid collision and depart from regulations if necessary, 437.
- decisions on earlier regulations, how far of value, 53, 311.
- for distress signals, Art. 31...488.
- fog, speed in, Art. 16...353.
- sound signals in, Art. 15...348.
- helm signals, Art. 28...449.
- keeping course and speed, Art. 21...390.
- lights for fishing vessels, Art. 9...333.
 - generally, Art. 1...313.
 - overtaken vessels, Art. 10...339.
 - pilot vessels, Art. 8...331.
 - sailing vessels, Art. 5...327.
 - small vessels, Art. 7...328.
 - in bad weather, Art. 6...328.
- steamships, Art. 2...318.
 - towing, Art. 3...323.
- vessels at anchor, Art. 11...341.
 - not under command, Art. 4...324.
- local rules, preserving, Art. 30...484.
- narrow channels, Art. 25...421.
- not crossing ahead, Art. 22...399.
- overtaking vessels, Art. 24...416.
- sailing vessels approaching sailing vessel, Art. 17...367.
 - fishing craft, Art. 26...431.
- special circumstances, Art. 27...432.
- steamships approaching sailing vessels, Art. 20...386.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA—*continued.*

- for steamships crossing, Art. 19...382.
 - meeting, Art. 18...377.
 - under sail, signal for, Art. 14...347.
- stopping and reversing, Art. 23...400.
- warning lights, Art. 11...345.
- history of legislation as to, 52 *seq.*, 297.
- international character of, 302.
- lights, as to. See *Lights, Ship's.*
- local rules of navigation. See *Local Rules.*
 - usages not to be neglected, 7, 437.
- meeting ship cannot become crossing ship, 310.
- objects of, 8, 67, 300, 434.
- ordinary precautions must be observed, 5.
- paramount rules of navigation, are the, 7.
- penalty for obeying. See *Infringement of the Regulations.*
- practice inconsistent with, bad, 10.
- proof of, 272, 298.
- provision of appliances necessary for complying with, 311.
- right of way, burden of proof of, 47.
- risk of collision. See *Risk of Collision.*
- "sailing vessel," when, includes steamship under sail, 312, 313.
- statutory obligation to observe, 52 *seq.*, 70.
- "steam vessel," meaning of, in, 312.
- strict obedience to, required, 9, 63, 433 *seq.*
 - excused when applicability not realised, 7.
- Submarine Telegraph Act, regulations under, 298.
- "under way," meaning of, 312, 319, 328.
 - not the same as "making way through the water," 326.
- validity of, considered, 299, 302.
 - scope of authority conferred by statute, 297, 299.
 - whether *ultra vires* in respect of inland waters, 299, 300.
 - whistle signals, 300.
 - vessels which are not "ships," 302.

REMOVAL OF WRECK, duty of harbour authority as to, 106.

REPAIRS. See *Damages.*

- cost of, allowed as damages, 118, 125.
- demurrage, where repairs due to two collisions, 129.
- duty to repair after collision, 123, 124.
- possessory lien for, whether damage lien has priority to, 93.

RESPONDEAT SUPERIOR,

- doctrine of, is *lex loci*, 224.
- does not apply to superior officer in Navy, 109.

RESTITUTIO IN INTEGRUM, meaning of phrase, 117.

REVERSED PROPELLER, action of, on ship's head, 414.

RIDING LIGHT. See *Lights, Ship's*.

Art. 11...341.

for fishing boats, Art. 9...333.

small craft, Art. 7...328.

RISK OF COLLISION,

altering course so as to cause, 307.

where there is no, 309.

indications of, 307, 366, 371.

instances of, 309.

regulations are intended to prevent, 303, 304.

taking least, in real dilemma, 4.

uncertainty of facts causing, 306, 371.

whether regulations apply where there is probability of, 305.

or after risk is determined, 311.

RIVER,

application of crossing rule in, 284, 424.

customary track of ships in, 427.

duty to ease before rounding a point, 425, 428.

navigation of winding, 305, 391, 427.

starboard side rule in, Art. 25...422, 424, 427.

whether regulations apply in, 299.

ROMAN LAW,

liability for collision, 77 *note*.

no limitation, 172.

RULE OF THE ROAD. See *Regulations for Preventing Collisions; Local Rules; Foreign Law; Foreign Ships*.

RUNNING-DOWN CLAUSE, in policy of insurance, 150, 252, 254, 255.

"RUNNING-FREE," meaning of term, Art. 17...368.

SAILING VESSEL,

approaching another on opposite tack, Art. 17...367.

fisherman, 338, 374, 431.

steamship, Art. 20...386, 389.

steam trawler, 338.

beat out tack, duty to, 397, 470.

cases illustrating Art. 17...374 *seq.*

close-hauled, Art. 17...367, 370, 372, 447.

crossing ahead when keeping out of the way, 369.

"end-on" rule, none for, 377, 380.

foul berth, giving, 460.

hove-to. See *Hove-to, Ship*.

in fog, moderate speed, 363.

keeping course and speed, 370, 389, 390.

SAILING VESSEL—continued.

- overtaking another, steam or sail, Art. 24...416.
- running-free, Art. 17...368.
- sound signals for, in fog, &c., Art. 16...353.
- what is a, within regulations, 312.

SALVAGE,

- action, whether costs of, recoverable as damages, 125, 127, 262.
- after collision, 262.
- collision with salvor, 263.
- duty to stand by does not affect right to, 74.
- expenses, damages, 125, 127.
- life, not a charge in collision damages, 133.
- loss of expected salvage, damages, 126.
- master, whether within scope of his employment, 79, 209.
- towing ships clear of each other, 262, 263.
- wrong-doer, by, not recoverable, 262.

SALVOR,

- collision with, 24, 25, 79, 209, 262.
- caused by fault of, 24, 79, 262.

SCOPE OF EMPLOYMENT,

- employer liable for acts of servant within, 79.
- master, of, whether salvage service is within, 79, 209.

SCREENS,

- regulation as to, Art. 2...318.
- shortness or absence of, 321.

SEAMANSHIP,

- assessors advise as to matters of, 273.
- saving clause in regulations as to, Art. 29...452.

SERVANT,

- doctrine of common employment prevents recovery by, when injury caused by fellow servant, 115.
- master whether fellow servant of crew, 115 *note*.
- pilot, unless compulsory, is, of owner, 236.
- compulsory, is not, 115, 236.

SHEERING, when at anchor, 344.**SHIP,**

- abandonment of, after collision by crew, 122.
- affected by fault of those on board, 78 *seq*.
- barge, damage to or by. See *Barge*.
- chartered, liability for damage by, 50.
- close-hauled. See *Close-hauled*.
- crossing ships. See *Crossing Ships*.
- dangerous *in se*, not, 45.
- definition of, in Merchant Shipping Act, 1894...178.
- disabled by own fault, 16.

SHIP—*continued.*

- ferry boat. See *Ferry Boat*.
- foreign ship. See *Foreign Ship*.
 - sovereign, of, damage by. See *Sovereign, Foreign*.
- hove-to. See *Hove-to, Ship*.
- launch of. See *Launch*.
- liability of, by maritime law, 223.
 - in Admiralty proceedings in rem, 85 seq.
 - for fault of compulsory pilot, 236.
 - limitation of. See *Limitation of Liability*.
 - where owners are not liable, 86, 87.
 - for damage by or to. See *Liability*.
- lying dead in water, 379.
- meeting ships. See *Meeting Ships*.
- not under command, lights and signals for, Art. 4...324.
- overtaking and overtaken. See *Overtaking Ship; Overtaken Ship*.
- owners, their liability. See *Owners of Ship; Liability*.
- personification of, in Admiralty, 1, 85.
- port tack, on. See *Port Tack*.
- registration, what British ships exempt from, 179.
- rule of the road for. See *Regulations*.
- ship's lights. See *Lights, Ship's*.
- small craft not required to keep out of the way of large, 483.
- speed of. See *Speed*.
- steamship. See *Steam Vessel*.
- sunken ship, damage by. See *Sunken Ship*.
- telegraph, 298, 324.
- towing or in tow. See *Tug and Tow*.
- unusual or dangerous construction, of, 478.

SHIPOWNER. See *Owners of Ship*.

SHORTHAND NOTES, costs of, 296.

SIDE LIGHTS. See *Lights, Side*.

SIGNALS,

- distress, Art. 31...488.
- fog, sound signals in, Art. 15. See *Fog Signals*.
- for pilot, 317.
 - vessel going astern, 451, 468.
 - not under command, Art. 4...324.
 - reversing propeller to clear mud, 451.
 - telegraph ships, Art. 4...324.
 - fishing, Art. 9...333.
- helm signals, Art. 28...449.
 - failure to sound, effect on liability, 70.
 - meaning of "authorised or required," 450.
- misleading signals, should not be given, 315, 452.
- pilot boat's lights, Art. 8...331.
- private lights, 317; Art. 13...346.
- warning, 345, 473, 480.

SLACKEN SPEED,

duty of steamship to, Art. 23...400.

whether duty to, concurrent with duty to alter course, 403.

SLIPPING,

to avoid collision, 464, 467.

value of anchor and chain slipped can be recovered, 39.

SMALL CRAFT,

not required to keep out of the way of large, 483.

SMELLING THE GROUND, 475.

SMOKE, obscuration of lights by, 365.

SNOW SQUALLS,

necessity to sound when in neighbourhood of, 351.

SOUND,

signals for thick weather. See *Fog Signals*.

to indicate alteration of course, Art. 28...449.

transmission of, in thick weather, 48 *note*.

SOVEREIGN, FOREIGN,

ship of foreign, not liable to arrest, 109, 230, 280.

submitting to jurisdiction of British Court, 232, 347.

suing must give bail to answer counterclaim, 232.

SPAIN, LAW OF,

liability for negligence, 224.

compulsory pilotage, as to, 241.

SPEED,

alteration of, infringement of, Art. 21...390.

crowded harbour, entering, 462.

duty of steamship to slacken or stop, Art. 23...400.

fog, in, Art. 16...353.

instances of improper, 357, 359, 363.

in Clyde, 513, 514.

Humber, 519.

Manchester Ship Canal, 523.

Suez Canal, 527.

Tees, 529, 530.

Thames, 539, 541, 542.

Tyne, 548.

moderate speed required in thick weather, Art. 16...353.

what is, 355.

ship's power of stopping relevant in considering what is, 355.

SPEED—continued.

- of mail ships, 359.
- sailing ship in thick weather, 363.
- steamship approaching other craft, 413.
- swell raised by excessive, damage by, 481.
- through water, not over ground, 481.
- tide immaterial, where both under way, 356.
- unavailing excuses for excessive, in fog, 359.

STANDING BY,

- duty of, 72.
- includes case of collision with a boat, 74.
- on whom cast, 73.
- failure to, formerly raised presumption of fault, 72.
- presumption of fault now repealed, 73.
- reasonable cause for failure to stand by, 73.
- right to salvage not affected by failure to stand by, 74.

STARBOARD-SIDE RULE,

- Art. 25...421.
- applies to steamships only, 421.
- application in winding river, 427.
- where local rules in force, 425.
- consequences of being on wrong side, 422.
- decisions as to the rule of the road on land, 426.
- under former Acts, 421.
- whether it overrides the steering rules, 424.

STARBOARD TACK, duty of ships on, 367.**STATUTES.**

- 13 Ric. II. cc. 3, 5 (Suits)...220, 286.
- 7 Geo. II. c. 15 (Responsibilities of Shipowners Act, 1734)...174.
- 26 Geo. III. c. 86 (Limitation of Liability Act, 1765)...174.
- 53 Geo. III. c. 159 (Limitation of Liability Act, 1780)...174, 282.
- 1 & 2 Geo. IV. c. 76 (Cinque Ports Act, 1831)...288.
- 6 Geo. IV. c. 78 (Quarantine Lights)...317.
- c. 125 (Pilotage)...227, 237.
- 6 & 7 Will. IV. c. 100 (local)...277.
- 3 & 4 Vict. c. 65 (Admiralty Court Act, 1840)...91, 220, 286.
- 6 & 7 Vict. c. 79 (Sea Fisheries Act, 1843)...337.
- 9 & 10 Vict. c. 93 (Lord Campbell's Act: Fatal Accidents Act, 1846)...113, 133, 185, 232, 285.
- c. 100 (Steam Navigation Act, 1846)...54, 297, 378, 421.
- 10 & 11 Vict. c. 27 (Harbour, Docks, and Piers Clauses Act, 1847)...83, 93, 106, 107, 188, 464.

STATUTES—*continued.*

- 14 & 15 Vict. c. 79 (Steam Navigation Act, 1851)...54,
55, 75, 297, 307, 378, 421.
- 17 & 18 Vict. c. 12 (Merchant Shipping Repeal Act,
1854)...55.
- c. 31 (Railway and Canal Traffic Act,
1854)...249.
- c. 104 (Merchant Shipping Act, 1854)...
297.
- ss. 3, 4...55.
- s. 55...301.
- s. 104...227.
- s. 147...180.
- s. 296...55, 305, 378, 379, 380, 435.
- s. 297...55, 421.
- s. 298...55, 57, 58, 141.
- s. 388...152, 237, 242.
- s. 504—505...175.
- s. 514...282.
- 24 & 25 Vict. c. 10 (Admiralty Court Act, 1861)...91,
132, 220, 221, 251, 273, 275,
276, 323.
- c. 97 (Malicious Damage Act, 1861)...261.
- 25 & 26 Vict. c. 63 (Merchant Shipping Act, 1862)...56,
57, 60, 72, 141, 176, 285, 286, 297,
301, 337, 422.
- 26 & 27 Vict. c. 92 (Railway Clauses Act, 1863)...249.
- 27 & 28 Vict. c. 95 (Fatal Accidents Act, 1864)...185.
- 28 & 29 Vict. c. 125 (Dockyard Ports Act, 1865)...69.
- 31 & 32 Vict. c. 45 (Sea Fisheries Act, 1868)...191, 292.
- c. 56 (Petroleum Act, 1868)...294.
- c. 71 (County Courts; Admiralty Jurisdic-
tion Act, 1868)...156, 277, 288.
- c. 78 (Admiralty Suits Act, 1868)...191,
292.
- c. 119 (Regulation of Railways Act, 1868)
...250.
- 32 & 33 Vict. c. 51 (County Courts; Admiralty Jurisdic-
tion Act, 1869)...156, 288.
- 34 & 35 Vict. c. 78 (Regulation of Railways Act, 1871)
...182.
- c. 110 (Merchant Shipping Act, 1871)...73.
- 36 & 37 Vict. c. 66 (Judicature Act, 1873)...141, 154,
169, 229, 261, 273, 275, 276, 294.
- c. 85 (Merchant Shipping Act, 1873)...
2, 58, 60, 61, 75, 405.
- 38 & 39 Vict. c. 15 (Sea Fisheries Act, 1874)...337.
- c. 88 ()...84.
- c. 90 (Employers and Workmen Act, 1875)
...115.

STATUTES—*continued.*

- 40 & 41 Vict. c. 16 (Wrecks Removal Act, 1877)...106,
188, 315.
c. 42 (Sea Fisheries Act, 1877)...337.
- 41 & 42 Vict. c. 73 (Territorial Waters Jurisdiction Act,
1878)...227.
- 43 & 44 Vict. c. 42 (Employers' Liability Act, 1880)...
115.
- 44 & 45 Vict. c. 219 (local) (Solent Navigation Act,
1881)...69, 485.
- 46 & 47 Vict. c. 22 (Sea Fisheries Act, 1883)...337.
- 48 & 49 Vict. c. 49 (Submarine Telegraphs Act, 1885)
...298.
- 50 & 51 Vict. c. 3 (Submarine Telegraphs Act, 1887)...
299.
- 54 & 55 Vict. c. 31 (Post Office Act, 1891)...232.
- 56 & 57 Vict. c. 61 (Public Authorities Protection Act,
1893)...108, 277.
- 57 & 58 Vict. c. 60 (Merchant Shipping Act, 1894)...
297.
s. 3...179.
ss. 77—91...177.
s. 220...261.
s. 418...227, 230, 489.
s. 419...2, 6, 52, 58, 59, 68, 71, 74,
80, 261, 318, 352, 443, 485.
s. 420...318.
s. 421...227, 299, 515.
s. 422...72.
s. 424...227, 302.
s. 434...498.
s. 448...245.
s. 469...262.
s. 502...245.
s. 503...176, 183, 229.
ss. 504—509...111, 179, 180, 184, 185,
188, 189, 190, 257, 282.
ss. 530—534...106.
ss. 557—564...346.
s. 607...261.
s. 615...317.
s. 620...183.
s. 633...237.
s. 666...182, 265, 469.
s. 680...72, 261.
s. 688...93, 222.
s. 695...272, 298.
s. 719...272, 298.
s. 733...317, 346.

STATUTES—continued.

- 57 & 58 Vict. c. 60, s. 738...272, 298.
 s. 741...179.
 s. 742...144, 178.
 s. 745...189.
- 60 & 61 Vict. c. 21 (Mersey Channels Act, 1897)...524.
- 61 & 62 Vict. c. 14 (Merchant Shipping (Liability of Shipowners) Act, 1898)...178.
- 63 & 64 Vict. c. 32 (Merchant Shipping (Liability of Shipowners and others) Act, 1900)
 ...105, 178, 179, 180, 182, 184, 188.
- 6 Ed. VII. c. 41 (Marine Insurance Act, 1906)...252.
- c. 48 (Merchant Shipping Act, 1906),
 ss. 54, 55...177.
 ss. 68, 69...189.
 s. 69...177.
 ss. 70—71...179.
- c. 58 (Workmen's Compensation Act, 1906)
 ...115, 281.
- 7 Edw. VII. c. 48 (Merchant Shipping Act, 1907)...189.
- 1 & 2 Geo. V. c. 85 (Maritime Conventions Act, 1911)
 s. 1...18, 29, 70, 111, 143, 146, 148,
 150, 152, 200, 249; 334, 336.
 s. 2...154.
 s. 3...111, 153, 281.
 s. 4...2, 25, 69, 73.
 s. 5...91, 155, 280.
 s. 6...233.
 s. 8...90, 96, 133, 155.
 s. 9...69, 75, 78, 141.
 s. 10...144, 230.
- 2 & 3 Geo. V. c. 31 (Pilotage Act, 1913)...83, 102, 151,
 183, 226, 228, 236; 237, 239, 242,
 317.
- 4 & 5 Geo. V. c. 50 (Merchant Shipping Convention Act, 1914)...317, 346, 489.

STEAM VESSEL,

- crossing another, Art. 19...382. See *Crossing Ships*.
- fog signals for, Art. 15...348. See *Fog Signals*.
- lights of, See *Lights, Ship's*.
- lying dead in water, duty of, 313, 320, 379, 386.
- meaning of the term in the regulations, 312.
- meeting end on, Art. 18...377. See *Meeting Steamships*.
- must keep out of the way of sailing ships, Art. 20...47, 386.
- rounding-to without warning to overtaking vessel, 390.
- ship propelled by any form of machinery, is, 312.
- slacken or stop, if necessary, duty to, Art. 23...400.
- speed in fog, Art. 16...353. See *Fog*.
- starboard side rule in narrow channels, 384.
- under sail when considered a sailing vessel, 312.
 black ball to indicate, Art. 14...347.

STEERING AND SAILING RULES,

Arts. 17—26...367 *seq.*direction of vessel's head, not her course over the ground,
determines which rule is applicable, 380.

whether Art. 27 applies only to, 432, 448.

STERN LIGHT,

Art. 10...339.

to be shown, though no risk, 340.

when to be shown and how long, 340.

whether pilot boat may exhibit, 322.

STOPPING AND REVERSING,

Art. 23...400.

is not infringed until the circumstances known and
the necessity apparent, 14, 61, 402 *seq.*, 409.

burden of proof, upon steamship failing to, 412.

effect of reversing on ship's head, 414.

excessive speed negligence apart from regulations, 412.

fog, in, application of Art. 23...408.

"if necessary," meaning of, 401.

Khedive, case of *The*, 62, 405.

not always prudent course, 413.

object of rule, both to minimise effect of and to prevent
collision, 67, 411.

overtaken ship not bound to, 412.

sailing ships, analogous rule for, 412.

tug, rule applied to, 193.

when other ship's course cannot be made out, 413.

where the rule applies, 402.

SUCTION, effect of, 41.

SUEZ CANAL, local rules of navigation for, 527.

SUNKEN SHIP,

abandonment of, 103, 124.

cost of raising, 125, 127, 262, 264.

damage by, 16, 103 *seq.*

to, 105.

duty to light and buoy, 103, 315.

raise, 124.

lighting negligence of independent contractor, 104.

money paid to wreck-raising authority, damages, 125.

wrong-doer not discharged by his ship being sunk, 185.

SWELL, sinking and damaging craft by raising, 39, 481.

TACK. See *Port Tack*; *Starboard Tack*; *Beating out Tack*.

TEES, local rules of navigation for, 528.

TELEGRAPH CABLE, damage to, 223.

TELEGRAPH SHIPS,

lights and signals for, Art. 4...324.
Submarine Telegraph Act, 1885...298.

THAMES,

local rules of navigation for, 531.
rules under Waterman's Act, 546.

THICK WEATHER. See *Fog*.THIRD PARTY PROCEDURE. See *Practice*.

TIDE,

customary track in rivers, with reference to, 427, 472.
duty for vessel proceeding against tide rounding point, 473.
eddy tide causing collision, 404, 474.
immaterial, as regards speed, when both ships under way,
356.

TONNAGE,

how calculated, 188.
of foreign ships for estimating liability, 189.
register, *prima facie* evidence of, 189.

Tow. See *Tug and Tow*.TOWAGE CONTRACT. See *Tug and Tow*.

Admiralty jurisdiction, 210.
broken by negligence causing damage to tow, 206, 264.
County Court jurisdiction, 106 *note* (a).
exceptions in, 206, 210.
mutual rights of tug and tow under, 204 *seq.*
negligence of tug may be excepted by, 206, 210.
terms and performance, 25, 204 *seq.*

TRANSFER OF ACTION. See *Practice*.

TRANSPORT, damage by, to another of the fleet, 81.

TRAWLER. See *Fishing Vessels*.TRENT, local rules. See *Humber*.

TRINITY HOUSE, LONDON,

navigation rules issued by, in 1840...53.

TUG AND TOW. See *Towage Contract*.

Admiralty jurisdiction, negligent towage, 210.
American cases as to liability of tug and tow, 194 *seq.*,
211 *seq.*
casting off tow unjustifiably, tug liable for damage from,
203.
collision between two ships in tow,
tug and tow, 204, 206, 208.
third ship by fault of tug, 198.
tow, 199.
both, 200.

TUG AND TOW—*continued*.

- collision between tow and third ship by fault of tug, 199.
 - tow, 198.
 - both, 200.
- by tow raises no presumption of negligence in tug, 210.
- command, test of liability between tug and tow, 197, 199, 204.
- contribution or indemnity between tug and tow, 206.
- crowded waters, duty of tug in, 201.
- damage by tow after being cast off, 203.
 - getting adrift, 212.
 - going astern, 216.
 - with sail set, 210, 215.
- deemed to be one ship for some purposes, 193.
- division of loss, collision with third ship, 146, 200, 217, 218.
- doctrine of common employment between, 209.
- duties of tow, 201, 203, 205.
 - as to engaging seaworthy and adequate tug, 198.
 - putting tow line on board tug, 204.
 - must be ready to cast off when necessary, 204.
 - follow in tug's wake, 204.
 - give order to slip when necessary, 204.
 - have proper lights, 204.
 - warn tug of danger, 202, 204.
- duties of tug, 25, 201, 202, 203.
 - in crowded waters, 201.
 - must be sufficient for her work, 202, 205.
 - keep clear of craft without orders from tow, 201, 480.
 - vigilant look-out, 203.
 - obey orders of tow, 201, 203.
 - pick up cast off tow again, 203.
 - provide sufficient tow line, 203.
 - warn tow of danger, 202.
 - with heavy ship in tow, 388.
 - tug-owner to provide adequate tug, 203.
- duty to employ tug, 27, 37, 208.
- stand by after casting off, 203.
- fog signals for, 349, 351, 352.
- liability, principle on which tow liable for acts of tug, 197.
 - a question of fact, no presumption against either, 193, 196.
 - joint and several, of, 199, 200, 208.
 - of owner of heavy ship being moved by tugs, 215, 446.
 - shipowner for neglecting to employ tug, 27, 37, 122.
 - employing inefficient tug, 198, 205, 209.

TUG AND TOW—*continued*.

- liability of tow-owners for damage by tow, 198, 200, 204.
 - tug, 198, 199, 200.
 - compulsorily employed. 207.
 - tug-owners for damage by tug, 198, 200.
 - due to deficiency of tug, 203, 205.
 - by tow, 199, 200.
 - towing improper number of ships, 195, 209, 213.
 - where command is with tug, 197.
 - tow, 204.
- lights for steamship towing, Art. 3...323 *seq.*
 - towed, 313.
 - sailing ship towing, 193.
- limitation of liability, 187, 209.
 - injury by tug to tow. "improper navigation," 187.
- Maritime Conventions Act, effect of, 200.
- partially encumbered vessel, tug with tow is, 15, 194.
- recovery by tow of damages paid to third ship, 206.
 - costs of defending action by third ship, 128.
- regulations, compliance with, by, 193.
- rules for towage in Tees, 530.
 - Thames, 533, 543, 544.
 - Tyne, 548, 549.
- sailing ship in fault for not keeping out of the way of, 194.
- salvor towing liable for negligence, 209, 263.
- stop and reverse rule applied to, 194.
- third party procedure, tug, tow and third ship, not available, 210.
- tow line causing damage to third ship, 204.
 - parting, 213.
- tow entitled to assume proper navigation in tug, 480.
- "tug is servant of tow," meaning of phrase, 196.
 - casting off tow line, 214.
 - making fast without knowledge of tow, 212.
 - tow and third ship, third party procedure, 210.
 - towing her ship ashore, 213.
 - working at ship ashore, duty to keep out of the way, 474.
- tugs racing for a job, 37.
- two tugs in charge of one ship, responsibility, 208.
- unseaworthy ship in tow, 217.
- unwieldy tow, 195, 210, 446.
- warranty of fitness of tug by tug-owner supplying, 203, 205.

TURKEY, SHIPS OF, do not use bell, Art. 15...348.

TYNE, local rules of navigation in, 546.

UNDER WAY.

getting under way, precautions before, 468.

when another vessel approaching, 386.

in improper weather, 365.

meaning of the term, 312, 319, 328.

vessel lying dead in water, 374, 379.

VESSEL.

definition of, in Merchant Shipping Act, 1894...144, 178.

decisions as to what are, 144, 178.

Maritime Conventions Act, 1911, applies to "vessels," 143.

vessels which are not "ships" not entitled to limit liability, 178.

WARSHIPS. See *King's Ships*.

WATERMAN, rules as to Thames, 546.

WHARFINGER. See *Harbour Authority*.

WHISTLE,

duty to sound, whether can be excused under Art. 27...
432, 433, 448.

signals by, to indicate alteration of course, Art. 28...400.
steamship in thick weather, Art. 15...348.

WILFUL DAMAGE,

by master or crew, owner not liable for, 40, 79.

foreign ship to another in foreign waters, 233.

WINDING RIVER. See *Narrow Channel; Rivers*.

WORKMEN'S COMPENSATION ACT, whether sums paid under, can
be recovered as damages in action *in rem*, 115, 281.

WRIT. See *Practice*.

OCTOBER, 1918.

A
SELECTION
OF
RECENT LAW WORKS

PUBLISHED BY

STEVENS & SONS, LIMITED,
119 & 120, CHANCERY LANE, LONDON, W.C.2.

**** A Discount of 20 per cent. off all new Books**
(except where marked *net*) for Cash with Order.
(Carriage or Postage extra.)

Complete Catalogue of New and Secondhand Law Works post free.

A B C GUIDE TO THE PRACTICE OF THE SUPREME COURT, 1916. *Net, 5s.*

"Of great service to the profession."—*Solicitors' Journal*.

ACCOUNTS.—Hodsoll's Practical Accounts for Executors and Trustees. 1914. *Net, 10s. 6d.*

"Invaluable to law and accountancy students, solicitors and others."—*Law Times*.

ADVOCACY.—Harris' Hints on Advocacy.—Fourteenth Edition. 1911. *7s. 6d.*

"Deserves to be carefully read by the young barrister whose career is yet before him."—*Law Magazine*.

AGRICULTURAL LAW.—Spencer's Agricultural Holdings Acts. Fifth Edition. With Notes. 1911 to 1915. 8s.

"A thoroughly practical and useful treatise."—*Saturday Review*.

Spencer's Small Holdings Acts.—With Notes. 1909 to 1910. *7s. 6d.*

Spencer's Corn Production Act, 1917.—Annotated and Explained. 1918. *5s.*

ANNUAL COUNTY COURTS PRACTICE, 1919.

(*Nearly ready.*) *Net, 1l. 5s.*

"It admirably fulfils the essential requisites of a practice book."—*Law Times*.

ANNUAL DIGEST, 1917. *15s.*

ANNUAL PRACTICE, 1919. *Net, 1l. 10s.*

"A book which every practising English lawyer must have."

—*Law Quarterly Review*.

ANNUAL STATUTES, 1917. *Net, 15s.*

AVERAGE.—Lowndes' Law of General Average.—Fifth Edition. By E. L. DE HART and G. R. RUDOLF. 1912.

1l. 16s.

BANKING.—Hart's Law of Banking.—Third Edition. 1914. 1*l.* 12*s.*

"The best all-round work on banking law which is in existence."—*Financial News*.

BANKRUPTCY.—Aggs' Handbook on Bankruptcy. 1915. *Net*, 4*s.*

Lawrance's Deeds of Arrangement, with Precedents. Eighth Edition. By SYDNEY E. WILLIAMS. 1914. 7*s.* 6*d.*

"Concise, practical, and reliable."—*Law Times*.

Williams' Law and Practice in Bankruptcy.—Eleventh Edition. By E. W. HANSELL and M. E. HANSELL. 1915. 1*l.* 16*s.*

"The leading text-book on bankruptcy."—*Law Journal*.

BELGIUM LAWS.—Butaye and De Leval's Digest of the Laws of Belgium and of the French Code Napoleon. 1918. *Net*, 15*s.*

CARRIERS.—Carver's Treatise on the Law relating to the Carriage of Goods by Sea.—Sixth Edition. By JAMES S. HENDERSON. 1918. 2*l.* 2*s.*

"The standard modern book on carriage by sea."—*Law Quarterly*.

Disney's Law of Carriage by Railway.—Fourth Edition. 1915. 7*s.* 6*d.*

"Can be cordially recommended to the lawyer."—*Law Times*.

CHANCERY.—Daniell's Chancery Practice.—Eighth Edition. By SYDNEY E. WILLIAMS and F. GUTHRIE-SMITH. 2 vols. 1914. 5*l.* 5*s.*

Daniell's Chancery Forms and Precedents.—Sixth Edition. By R. WHITE, F. E. W. NICHOLS and H. G. GARRETT. 1914. 2*l.* 10*s.*

"The two volumes on Practice and the one volume of Forms constitute together a most valuable work on the practice of the Chancery Division."—*Law Quarterly Review*.

COMPANY LAW.—Palmer's Company Law. A Practical Handbook for Lawyers and Business Men. Tenth Edition. By ALFRED F. TOPHAM. 1916. *Net*, 15*s.*

"Palmer's 'Company Law' is one of the most useful and convenient text-books on the practitioner's bookshelf."—*Law Times*.

Palmer's Company Precedents.—Eleventh Edition.

Part I. General Forms. 1912. 2*l.* 10*s.*

Part II. Winding-up Forms and Practice. 1912. 2*l.*

Part III. Debentures and Debenture Stock. 1912. 1*l.* 10*s.*

"Palmer's works on Company Law are all beyond criticism."—*Law Magazine*.

COMPANY LAW—continued.

Palmer's Private Companies.—Fortieth Edition. 1918.
Net, 1s.

Palmer's Shareholders', Directors', and Voluntary Liquidators' Legal Companion.—Twenty-ninth Edition. 1915.
Net, 2s. 6d.

CONSTITUTIONAL LAW.—Ridges' Constitutional Law of England.—Second Edition. 1915. 15s.

"It enables the student to obtain a completer view of the whole field than is obtainable from any other book with which we are acquainted."—*Law Notes*.

CONTRACTS.—Addison's Law of Contracts.—Eleventh Edition. By W. E. GORDON and J. RITCHIE. 1911.
2l. 2s.

"Among all the works on Contracts, there is none more useful to the practitioner than Addison."—*Law Times*.

Leake's Principles of the Law of Contracts.—Sixth Edition. By A. E. RANDALL. 1911. 1l. 18s.

"A full and reliable guide to the principles of the English Law of Contract."—*Law Journal*.

Pollock's Principles of Contract.—Eighth Edition. 1911. 1l. 12s.

"There is no book on the English Law of Contract which deals so lucidly and yet so comprehensively as this."—*Law Journal*.

CONVEYANCING.—Prideaux's Forms and Precedents in Conveyancing.—Twenty-first Edition. By B. L. CHERRY and R. BEDDINGTON. 2 vols. 1913. Net, 4l. 4s.

"'Prideaux' is the best work on Conveyancing."—*Law Journal*.

Wolstenholme's Conveyancing and Settled Land Acts.—Tenth Edition. By B. L. CHERRY, A. E. RUSSELL and C. V. RAWLENCE. 1913. 1l. 5s.

"The work is valuable not only as an accurate statement of the present law, but as the most reliable guide on matters of detail intended to be covered by the new legislation."—*Law Journal*.

COPYHOLD ENFRANCHISEMENT.—Lloyd's Practice in Enfranchisements under the Copyhold Act, 1894. 1913. 5s.

"The book is well arranged and well written, and the subject is so clearly dealt with as to be easily understood."—*Law Notes*.

CRIMINAL LAW.—Archbold on Indictments.—With Forms. By H. D. ROOME. 1916. 10s. 6d.

Archbold's Pleading, Evidence and Practice in Criminal Cases.—Twenty-fifth Edition. By H. D. ROOME and R. E. ROSS. 1918. Net, 2l. 2s.

CRIMINAL LAW—continued.

Russell's Treatise on Crimes and Misdemeanors.—
Seventh Edition. By W. F. CRAIES and L. W. KER-
SHAW. 3 vols. 1909. 4l. 10s.
"Indispensable in every Court of criminal justice here and in
our colonies."—*The Times*.

DEATH DUTIES.—Webster-Brown's Finance Acts.—
Third Edition. 1915. 12s. 6d.
"Contains much practical advice which will be of substantial
assistance to practitioners."—*The Times*.

DIARY.—The Lawyer's Companion and Diary, 1919.
4s. 6d. to 12s. net.

DICTIONARY.—Wharton's Law Lexicon.—Twelfth Edi-
tion. By E. A. WURTZBURG. 1916. 2l. 10s.
"The most useful of legal works."—*Law Journal*.

The Pocket Law Lexicon.—Fourth Edition. 1905.
Net, 6s. 6d.
"A wonderful little legal Dictionary."—*Law Students' Journal*.

DIGEST.—Mews' Quinquennial Digest, 1911-1915. By
JOHN MEWS. 1916. 2l. 10s.
The Annual Digest, 1916 & 1917. Each 15s.

**DIVORCE.—Browne and Watts' Law and Practice in
Divorce and Matrimonial Causes.**—Eighth Edition.
By J. H. WATTS. 1913. Net, 1l. 8s.
"The practitioner's standard work on divorce practice."—*Law
Quarterly Review*.

**EASEMENTS.—Goddard's Treatise on the Law of Ease-
ments.**—Seventh Edition. 1910. 1l. 10s.
"Nowhere has the subject been treated so exhaustively."—*Law
Times*.

Innes' Digest of the Law of Easements.—Eighth Edi-
tion. 1911. 7s. 6d.
"The student will find in it everything that he wants, while the
practitioner will be glad to have so safe and comprehensive a
guide."—*Law Journal*.

**ESTATES.—Thompson's English Law and Practice relat-
ing to Estates of Persons Dying Domiciled Abroad in
Non-Contentious Matters.** 1917. 5s.

EQUITY.—Seton's Forms of Judgments and Orders.
With Practical Notes. Seventh Edition. By A. R.
INGPEN, K.C., F. T. BLOXAM and H. G. GARRETT.
3 vols. 1912. 6l.
"A most valuable and indispensable work."—*Law Journal*.

**Smith's Practical Exposition of the Principles of
Equity.**—Fifth Edition. 1914. 21s.
"Useful to both practitioner and student alike."—*Law Stu-
dents' Journal*.

EVIDENCE.—Holt's Outline of the Rules of Evidence.—1917. *Net, 1s.*

Tregarthen's Law of Hearsay Evidence.—1915. *Net, 5s.*

"An elaborate and detailed account of a very imperfectly understood topic."—*Law Quarterly Review.*

Watson's Law of Evidence.—1917. *Net, 12s. 6d.*

EXECUTORS.—Ingpen's Treatise on the Law relating to Executors and Administrators.—Second Edition. 1914. *Net, 1l. 5s.*

"The book may be recommended, with confidence, as accurate, practical, and learned."—*Law Quarterly Review.*

FORMS.—Bowstead's Collection of Forms and Precedents other than Conveyancing, Company, Local Government and Practice Forms.—2 vols. 1914. *Net, 2l. 10s.*

"An indispensable adjunct to every practising lawyer's library."—*Law Journal.*

Chitty's Forms of Civil Proceedings in the King's Bench Division.—Fourteenth Edition. By T. W. CHITTY, E. H. CHAPMAN and P. CLARK. 1912. *2l. 10s.*

"An indispensable adjunct to every working lawyer's library."—*Law Journal.*

Daniell's Chancery Forms and Precedents.—Sixth Edition. By R. WHITE, F. E. W. NICHOLS and H. G. GARRETT. 1914. *2l. 10s.*

"The standard work on Chancery Procedure."—*Law Quarterly Review.*

HIRE-PURCHASE SYSTEM.—Russell's Practical Manual of Hire-Trade Law.—Fifth Edition. 1914. *7s. 6d.*

"The book is full of practical suggestions."—*Solicitors' Journal.*

INSURANCE.—Arnould on the Law of Marine Insurance and Average.—Ninth Edition. By E. L. DE HART and R. I. SIMEY. 2 vols. 1914. *4l. 4s.*

"Arnould's 'Marine Insurance' is recognised throughout the British Empire and the United States as a standard work of almost judicial authority."—*Law Journal.*

Stone's Insurance and Workmen's Compensation Cases.—2 vols. 1914. *Net, 2l. 2s.*

"A very valuable compendium of the case law of insurance."—*Solicitors' Journal.*

INTERNATIONAL LAW.—Anthonis' Sanctions of International Law. 1917. *Net, 1s.*

Cheng's Rules of Private International Law Determining Capacity to Contract.—1916. *7s. 6d.*

INTERNATIONAL LAW—continued.

Wheaton's Elements of International Law.—Fifth English Edition. By COLEMAN PHILLIPSON, LL.D. With an Introduction by the Right Hon. Sir FREDERICK POLLOCK, Bart., D.C.L., LL.D. 1916. 2l.

"Wheaton stands too high for criticism."—*Law Times*.

LAND VALUES.—Napier's New Land Taxes and their Practical Application.—Second Edition. 1912. 1l. 1s.

"Napier's explanatory summary of the new taxation and his notes on the sections are admirable."—*Law Quarterly Review*.

LANDLORD AND TENANT.—Woodfall's Law of Landlord and Tenant.—Nineteenth Edition. By W. HANBURY AGGS. 1912. 2l. 2s.

"Woodfall is really indispensable to the practising lawyer, of whatever degree he may be."—*Law Journal*.

LAW LIST, 1918.

Net, 10s. 6d.

LEADING CASES.—Caporn's Selected Cases on the Law of Contracts.—Second Edition. 1914. 15s.

Petrides' Student's Cases, illustrative of all branches of the Law. 1910. 12s. 6d.

"The cases appear to be well chosen and correctly stated."—*Solicitors' Journal*.

Randall's Selection of Leading Cases in Equity.—1912. 10s. 6d.

"One of the foremost, if not the best, of Equity case books."—*Law Students' Journal*.

Shirley's Selection of Leading Cases in the Common Law.—Ninth Edition. By R. WATSON. 1913. 18s.

"The selection is very large, though all are distinctly 'Leading Cases,' and the notes are by no means the least meritorious part of the work."—*Law Journal*.

LEGAL HISTORY.—Deans' Student's Legal History.—Third Edition. 1913. 10s.

"There is no better short introduction to the study of the law."—*Law Notes*.

LIBEL AND SLANDER.—Ball's Law of Libel as affecting Newspapers and Journalists.—1912. 6s.

"A well-arranged and well-executed work."—*Law Journal*.

Odgers' Digest of the Law of Libel and Slander.—Fifth Edition. 1911. 1l. 18s.

"Should be found on the shelves of every practitioner."—*Law Students' Journal*.

LUNACY.—Heywood and Massey's Lunacy Practice.—Fourth Edition. 1911. 1l. 15s.

"A complete treatise on lunacy practice."—*Solicitors' Journal*.

MAGISTRATES' PRACTICE, 1916.—By C. M. ATKINSON, Stipendiary Magistrate for Leeds. 20s.

MENTAL DEFICIENCY.—Davey's Law relating to the Mentally Defective.—Second Edition. 1914. 10s.

"This admirably arranged and handy book."—*Law Journal*.

MILITARY SERVICE.—Stoker and Bentwich's Military Service Acts Practice. 1918. 7s. 6d.

MORTGAGE.—Coote's Treatise on the Law of Mortgages.—Eighth Edition. By SYDNEY E. WILLIAMS. 2 vols. 1912. Net, 3l. 3s.

"It is essentially a practitioner's book, and we pronounce it 'one of the best.'"—*Law Notes*.

NATIONAL INSURANCE.—Watts on National Insurance.—1913. 12s. 6d.

"Mr. Watts has studied this complicated Act with great care, and produced a very elaborate and complete edition."—*Law Magazine*.

NIGERIA.—Titles to Land in Nigeria.—1916. Net, 30s.

NOTARY.—Brooke's Office and Practice of a Notary.—Seventh Edition. By J. CRANSTOUN. 1913. 1l. 10s.

"The book is an eminently practical one, and contains a very complete collection of notarial precedents."—*Law Journal*.

PARTNERSHIP.—Pollock's Digest of the Law of Partnership.—Tenth Edition. 1915. 10s.

PLEADING.—Bullen and Leake's Precedents of Pleadings.—Seventh Edition. By W. BLAKE ODGERS, K.C., and WALTER BLAKE ODGERS. 1915. 2l. 10s.

"The standard work on modern pleading."—*Law Journal*.

Eustace's Practical Hints on Pleading.—1907. 5s.

"Especially useful to young solicitors and students of both branches of the legal profession."—*Law Times*.

Odgers' Principles of Pleading and Practice.—Eighth Edition. 1918. 15s.

"The safest possible guide in all matters affecting pleading and practice."—*Law Journal*.

POOR LAW SETTLEMENT.—Davey's Poor Law Settlement and Removal.—Second Edition. 1913. 15s.

"The law of the subject is most industriously and lucidly set out."—*The Spectator*.

POWERS.—Farwell's Concise Treatise on Powers.—Third Edition. By C. J. W. FARWELL and F. K. ARCHER. 1916. 1l. 15s.

PRIZE CASES.—Cases Decided in the Prize Court and on Appeal to the Privy Council.

Each Part Net, 7s. 6d.

RATING.—Davey's Law of Rating.—1913. 1l. 10s.

"A complete and exhaustive treatise on the subject, beyond doubt the most comprehensive which has yet appeared."—*Law Journal*.

RECEIVERS AND MANAGERS.—Riviere's Law relating to Receivers and Managers.—1912. 9s.

"A reliable guide to an intricate subject, and should be of great service to practitioners."—*Law Journal*.

TORTS.—Addison's Law of Torts.—Eighth Edition. By W. E. GORDON and W. H. GRIFFITH. 1906. *Net*, 1l. 18s.
"Essentially the practitioner's text-book."—*Law Journal*.

Pollock's Law of Torts.—Tenth Edition. 1916. 1l. 10s.
"Concise, logically arranged, and accurate."—*Law Times*.

* * An Analysis of the above for Students.—Second Edition. By J. K. MANNOCH. 1916. 5s.

TRADE UNIONS.—Greenwood's Law relating to Trade Unions.—1911. 10s.

"An admirably clear exposition of the law."—*Law Quarterly Review*.

A SUPPLEMENT to above, including the Trade Union Act, 1913. 1913. *Net*, 3s. 6d.

The two works together, net, 10s.

TRUSTS AND TRUSTEES.—Godefroi on the Law of Trusts and Trustees.—Fourth Edition. By SYDNEY E. WILLIAMS. 1915. 1l. 16s.

"An eminently practical and useful work."—*Law Times*.

WAR.—Chartres' Munitions of War Acts.—An Analysis, with Notes. 1916. *Net*, 5s.

Chartres' Judicial Interpretations of the Munitions of War Acts.—1917. *Net*, 4s.

Higgins' Defensively Armed Merchant Ships.—1917. *Net*, 1s.

Page's War and Alien Enemies.—The Law affecting their Personal and Trading Rights; and herein of Contraband of War and the Capture of Prizes at Sea. Second Edition. 1915. *Net*, 6s. 6d.

WILLS.—Theobald's Concise Treatise on the Law of Wills.—Seventh Edition. 1908. 2l.

"Indispensable to the conveyancing practitioner."—*Law Times*.

WORKMEN'S COMPENSATION.—Costs under the Workmen's Compensation Act.—With Precedents. 1915. 5s.

Knowles' Law relating to Compensation for Injuries to Workmen.—Third Edition. 1912. 1l.

"Its merits entitle it to rank with the best of the treatises on the subject."—*Law Quarterly Review*.

Workmen's Compensation Reports.—A complete Series of Reports of Cases on the subject of Workmen's Compensation. With Annotated Index.

Subscription for 1918, 15s. net (postage 1s. extra).

STEVENS & SONS, Ltd., 119 & 120, Chancery Lane, London,

